

SCHEDULE 2

Article 5

TRANSITIONAL PROVISIONS

PART I

TRANSITIONAL PROVISIONS CONSEQUENTIAL ON THE COMMENCEMENT OF PROVISIONS OF CHAPTERS I, II AND III OF PART II

1. Until the repeal of section 52(1) and (2) of the 1988 Act and the commencement of section 22(4) of the Act, the reference in section 52(1) of the 1988 Act to a governing body incorporated under Chapter IV of that Act shall have effect as if it included a reference to a governing body incorporated in pursuance of proposals published under section 32 of the Act.

2.—(1) This paragraph applies in relation to any school if immediately before 1st January 1994—

- (a) the governing body of the school are under a duty to publish proposals in accordance with section 62 of the 1988 Act for the acquisition of grant-maintained status for the school;
- (b) such proposals have been published in relation to the school, but not determined by the Secretary of State in accordance with section 62(11) of that Act; or
- (c) such proposals have been approved, but the governing body constituted in accordance with the proposals have not been incorporated in accordance with section 62(14) of that Act.

(2) In relation to any such school for the period specified in sub-paragraph (3) below—

- (a) sections 23, 25 to 37, 59 to 67 and 71 to 77 of, and Part I of Schedule 3 and Schedules 4 and 7 to, the Act shall not apply;
- (b) the repeal of sections 52(4) to (9), 53(8) (as it relates to the definition of “foundation governor”), 53(9), 60(7) to (9) and 61 to 71 of the 1988 Act, subsections (1)(a) and (b), (f) to (h) and (2) and (3) (as it relates to the definition of “incorporation date”) of section 104 of that Act, and paragraphs 1 to 4 and 6 of Schedule 5 to that Act shall not have effect; and
- (c) the amendments made by—
 - (i) section 47(5) of the Act to section 197(7) of the 1988 Act;
 - (ii) section 47(6) of the Act to paragraph 61 of Schedule 8 to the Further and Higher Education Act 1992⁽¹⁾;
 - (iii) section 47(7) and (8) of the Act to paragraphs 1(1) and 4(1) of Schedule 10 to the 1988 Act;
 - (iv) paragraph 24(b) of Schedule 19 to the Act to section 114 (1E) of the Education Act 1944⁽²⁾;
 - (v) paragraph 130 of Schedule 19 to the Act to section 119(2) of the 1988 Act (in so far as it has effect for the purpose of omitting “52(4)”); and
 - (vi) paragraph 164 of that Schedule to section 5 of the Diocesan Boards of Education Measure 1991⁽³⁾,

shall not have effect.

(3) Sub-paragraph (2) above shall have effect in relation to such a school for the period beginning on 1st January 1994 and ending on—

(1) 1992 c. 13.

(2) 1944 c. 31; subsection (1E) of section 114 was revised by paragraph 10 of Schedule 13 to The Children Act 1989 (c. 41).

(3) 1991 No. 2.

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- (a) where—
 - (i) the ballot by reference to the result of which the governing body are under a duty to publish proposals is declared void in accordance with section 61(11) of the 1988 Act, and
 - (ii) the fresh ballot held in accordance with that section does not show a majority in favour of seeking grant-maintained status for the school,
the date on which the result of that fresh ballot is determined;
- (b) where the proposals for acquisition of grant-maintained status referred to in (as the case may be) sub-paragraph (1)(a) or (b) above, or any proposals required in substitution for those proposals, are rejected by the Secretary of State or withdrawn, the date on which the proposals are so rejected or withdrawn; or
- (c) in any other case, the incorporation date in relation to the school (within the meaning of section 104(3) of the 1988 Act).

(4) Where in any case to which sub-paragraph (3)(a) above applies a second ballot is required to be held because the total number of votes cast in the fresh ballot is less than fifty per cent of the number of persons eligible to vote in that ballot, the reference in that sub-paragraph to the fresh ballot shall have effect as if it were a reference to the second ballot so held.

(5) The reference in sub-paragraph (3)(b) above to proposals required in substitution for any proposals for the acquisition of grant-maintained status (“the original proposals”) is to any proposals required to be published under section 62(4) or (12) of the 1988 Act on withdrawal or (as the case may be) rejection of—

- (a) the original proposals; or
- (b) any further proposals required to be published by virtue of section 62(4) or (12) in respect of the school without a further ballot.

(6) Proposals published under section 62 of the 1988 Act with respect to a school shall not be treated for the purposes of sub-paragraph (3)(b) above as rejected in any case where the Secretary of State imposes a requirement under section 62(12) of that Act or as withdrawn in any case where he imposes a requirement under section 62(4) of that Act.

(7) Where in the case of any school to which this paragraph applies the proposals for acquisition of grant-maintained status referred to in sub-paragraph (1) above are approved, section 56 of the Act shall have effect as if it required the initial instrument and articles of government to have effect from the incorporation date in relation to the school (within the meaning of section 104(3) of the 1988 Act).

3.—(1) This paragraph applies in relation to any school the governing body of which have before 1st January 1994 passed a resolution in accordance with section 60(1)(a) of the 1988 Act to hold a ballot of parents on the question of whether grant-maintained status should be sought for the school, but have not by that date confirmed their decision by passing a second resolution in accordance with that section.

- (2) In relation to any such school for the period specified in sub-paragraph (3) below—
 - (a) section 25 of the Act shall not apply;
 - (b) section 27 of the Act shall have effect with the reference to section 25 of the Act being construed as a reference to section 60 of the 1988 Act;
 - (c) the repeal of section 60(1)(a), (3), (4) and (5) of the 1988 Act shall not have effect;
 - (d) any references to section 61 of the 1988 Act in section 60(1)(a) and (4) of that Act shall have effect as if they were references to section 28 of the Act; and

- (e) the amendments made by paragraphs 163(a) and (c) and 164(b) of Schedule 19 to the Act to sections 3 and 5 of the Diocesan Boards of Education Measure 1991 shall not have effect.
- (3) Sub-paragraph (2) above shall have effect for the period beginning on 1st January 1994 and ending on—
 - (a) where the period of forty two days, after that on which the first resolution was passed, has expired and the decision to hold a ballot has not been confirmed by a second resolution passed in accordance with section 60(1)(a) of the 1988 Act, the date of the expiry of that period; or
 - (b) in any other case, the date on which a ballot is held in pursuance of the duty imposed on the governing body of the school by section 60(1)(a) and (4) of the 1988 Act (as it has effect by virtue of sub-paragraph (2)(c) above).

4.—(1) This paragraph applies in relation to any school where immediately before 1st January 1994 the governing body are under a duty by virtue of section 60(4) of the 1988 Act to hold a ballot in accordance with section 61 of that Act, but they have not held the ballot before that date.

(2) For the purposes of sub-paragraph (1) above, the governing body are to be treated as having held a ballot in pursuance of their duty under section 60(4) of the 1988 Act notwithstanding that, by virtue of section 61(9) of that Act, the result of the ballot is to be disregarded.

(3) In relation to the holding of the ballot referred to in sub-paragraph (1) above—

- (a) where the governing body have decided to hold the ballot by passing two resolutions in accordance with section 60(1)(a) of the 1988 Act, section 25(1)(a) of the Act shall have effect as if for “the period of ten weeks beginning with the date of the resolution” there were substituted “the period of three months beginning with the date of the second resolution”; and
- (b) where the governing body are required to hold a ballot having received such a request as is mentioned in section 60(1)(b) of the 1988 Act, section 26(3)(a) of the Act shall have effect as if for “the period of ten weeks beginning with the date on which the request was received” there were substituted “the period of two months beginning with the date immediately following the period of twenty eight days beginning with the date on which the request was received”.

5. Sections 30(1)(b) and 31(1)(d) to (g) of the Act shall not apply (where otherwise they would do so) to—

- (a) any ballot held before 1st January 1994; or
- (b) any ballot held after that date where the procedure for acquisition of grant-maintained status to which the ballot relates was initiated before that date in accordance with section 60(1)(a) or (b) of the 1988 Act.

6.—(1) The governing body of a primary school which is under a duty to publish proposals under section 32(1) of the Act shall be required to name in those proposals five parent governors where the circumstances mentioned in sub-paragraph (2) below apply.

(2) Those circumstances are that the information given to voters in connection with the holding of the relevant ballot was so given before 1st January 1994 in accordance with section 61(3)(a) of the 1988 Act.

(3) In sub-paragraph (2) above “the relevant ballot” means—

- (a) the ballot by reference to the result of which the governing body are under a duty to publish proposals in accordance with section 32(1) of the Act; or
- (b) where that ballot was a second ballot held in pursuance of section 30(1)(a) of the Act, the ballot the result of which led to the second ballot being held.

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7.—(1) Subject to sub-paragraph (2) below, this paragraph applies to any school in respect of which the procedure under Chapter IV of Part I of the 1988 Act for the acquisition of grant-maintained status is pending (within the meaning of section 76 of that Act) immediately before 1st January 1994.

(2) Where in the case of any such school, the procedure for acquisition of grant-maintained status, which is pending as mentioned in sub-paragraph (1) above, is terminated in accordance with section 76(4) of the 1988 Act (as it has effect by virtue of sub-paragraph (3) below), this paragraph shall cease to apply to that school from that date.

(3) In relation to any school to which this paragraph applies—

- (a) sections 38 and 40 to 46 of the Act shall not apply;
- (b) the repeal of sections 74 and 76 to 78 of the 1988 Act shall not have effect;
- (c) paragraph 6(1)(c) or (as the case may be) paragraph 7(1)(c) of Schedule 13 to the Act shall have effect as if the reference to section 40 of the Act were a reference to section 76 of the 1988 Act; and
- (d) the amendments made by—
 - (i) section 47(9) of the Act to Schedule 10 to the 1988 Act;
 - (ii) paragraph 134(a) of Schedule 19 to the Act to section 198(1) of the 1988 Act;
 - (iii) paragraph 137 of that Schedule to section 230(1) of the 1988 Act (in so far as it has effect for the purpose of omitting the words “section 74 (taken with Schedule 10)”); and
 - (iv) paragraph 139(a)(ii) and (c) of that Schedule to section 235 of the 1988 Act, shall not have effect.

(4) Where paragraph 2 above does not apply in the case of any school in respect of which sub-paragraph (3) above has effect, any reference in sections 74 to 78 of the 1988 Act (as they have effect by virtue of that sub-paragraph) to the transfer date shall have effect in relation to that school as if it were a reference to the date of implementation of the proposals (within the meaning of section 37(2) of the Act).

PART II

TRANSITIONAL PROVISIONS CONSEQUENTIAL ON THE COMMENCEMENT OF CHAPTER V OF PART II

8.—(1) This paragraph applies in relation to any grant-maintained school where—

- (a) the governing body of the school were incorporated under Chapter IV of Part I of the 1988 Act;
- (b) an instrument and articles of government have been made for the school under that Chapter before 1st January 1994; and
- (c) the school was a county school immediately before it became grant-maintained.

(2) In the case of any school to which this paragraph applies, the instrument of government shall be modified by substituting the following for the definition of “first governor” in paragraph 1 (interpretation)—

““first governor” means—

- (a) in relation to any person appointed to such a governorship before 1st January 1994, a governor of the kind referred to in paragraph 3(1)(d); and
- (b) in relation to any person so appointed on or after that date—

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- (i) a person appointed by the governing body who appears to them to be committed to the good government and continuing viability of the school; or
- (ii) a person appointed under paragraph 3A of this instrument who appears to the person appointing him to be committed to the good government and continuing viability of the school,

and the following provisions of this instrument shall have effect accordingly;”.

(3) In the case of any school to which this paragraph applies, the instrument of government shall be modified by inserting after paragraph 3(4) (which requires the governing body to secure that at least two of the first governors are parents of registered pupils at the school) the following sub-paragraph—

“(4A) The governing body shall secure that, in appointing any person to be a first governor on or after 1st January 1994, at least two of the first governors are (on the date or dates on which they respectively take office) members of the local community.”.

(4) In the case of any school to which this paragraph applies, the instrument of government shall be modified by inserting after paragraph 3 (composition of the governing body) the following paragraph—

“Power of Secretary of State to replace first governors

3A.—(1) The Secretary of State shall have power, where any of sub-paragraphs (2), (3) and (5) below apply, to replace all or any of the first governors.

(2) This sub-paragraph applies where the governing body have been guilty of substantial or persistent failure to comply, or secure compliance, with any requirement imposed by or under any enactment.

(3) This sub-paragraph applies where—

- (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school;
- (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion;
- (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of the Education Act 1993, he did not express the opinion in the report that special measures were not required to be taken in relation to the school; and
- (d) the Secretary of State has received a statement prepared under section 210 of the Education Act 1993 (statement of special measures to be taken by the governing body), or the period allowed under subsection (2) of that section for the preparation of such a statement has expired.

(4) Any expression used in sub-paragraph (3) above which is also used in Part V of the Education Act 1993 shall have the same meaning as in that Part.

(5) This sub-paragraph applies where in the opinion of the Secretary of State any action taken or proposed by the governing body, or any failure of the governing body to act, is prejudicial to the provision of education by the school.”.

9.—(1) This paragraph applies in relation to any grant-maintained school where—

- (a) the governing body of the school were incorporated under Chapter IV of Part I of the 1988 Act; and

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(b) an instrument and articles or government have been made for the school under that Chapter before 1st January 1994.

(2) In the case of any school to which this paragraph applies, the instrument of government shall be modified by substituting for paragraphs 2 to 4 of Appendix 3 (Appeal committees on admissions and permanent exclusions) the following paragraphs—

“2. An appeal committee shall consist of—

- (a) where all the members of the appeal committee were nominated before 1st January 1994, three, five or seven persons appointed by the governing body under paragraph 4C(1) below; or
- (b) in any other case—
 - (i) one person nominated by the governing body from among the persons who are eligible to be lay members, and
 - (ii) two, four or six other members nominated by the governing body from among persons appointed by them under paragraph 4C(1) below.

3. The governing body shall not nominate under paragraph 2(b)(i) above a person who falls within paragraph 4C(1) below.

4.—(1) In the case of an appeal committee to which paragraph 2(a) above applies, the members of the committee who are members of the governing body may not outnumber the other members by more than one.

(2) In the case of an appeal committee to which paragraph 2(b) above applies—

- (a) three members shall be nominated from among those appointed under paragraph 4C(1)(b) below, in the case of a committee consisting of seven members;
- (b) two members shall be so nominated, in the case of a committee consisting of five members; and
- (c) one member shall be so nominated, in the case of a committee consisting of three members.

4A. Sufficient persons may be appointed by the governing body to enable two or more committees to sit at the same time.

4B. A person is eligible to be a lay member for the purposes of paragraph 2(b)(i) above if—

- (a) he is a person without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity), and
- (b) he does not have, or has not at any time had, any connection with—
 - (i) the school, or
 - (ii) any person who is a member of, or employed by, the governing body, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the school.

4C.—(1) Subject to sub-paragraphs (2) and (3) below, the persons appointed—

- (a) may include one or more members of the governing body, and
- (b) shall include persons who have experience in education, who are acquainted with the educational conditions in the area, or who are parents of registered pupils at a school.

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(2) A person shall not be appointed in pursuance of sub-paragraph (1) above, if he is employed as a teacher or otherwise at the school.

- (3) A person shall not be appointed in pursuance of sub-paragraph (1)(b) above, if he—
- (a) has ever been a member of the Governing Body, or
 - (b) is a parent of a registered pupil at the School.”.

10.—(1) This paragraph applies to any grant-maintained school where—

- (a) the governing body of the school are incorporated under Chapter IV of Part I of the 1988 Act; and
- (b) the instrument and articles of government prescribed by virtue of section 56 of the Act have effect in relation to that school.

(2) In relation to any school to which this paragraph applies, Part III of Schedule 7 to the Act shall have effect with the following modifications:—

- (a) in paragraph 10(1) there shall be inserted after paragraph (d)—

“or

(e) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who—

- (i) immediately before that date, was a parent governor (within the meaning of the Education (No.2) Act 1986) in relation to the school, or
- (ii) was elected under section 66, or elected or nominated under section 68, of the 1988 Act to hold office as a parent governor on the governing body.”;

- (b) in paragraph 11(1) there shall be inserted after paragraph (c)—

“or

(d) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who—

- (i) immediately before that date, was a teacher governor (within the meaning of the Education (No.2) Act 1986) in relation to the school, or
 - (ii) was elected under section 66, or elected or nominated under section 68, of the 1988 Act to hold office as a teacher governor on the governing body.”;
- and

- (c) in paragraph 12, there shall be inserted after paragraph (c)—

“or

(d) in the case of a governing body incorporated under Chapter IV of Part I of the 1988 Act, became a member of the governing body on the incorporation date in relation to the school (within the meaning of section 104(3) of that Act), and who was selected under section 66 or nominated under section 68 of that Act as being a person who appeared to those selecting or nominating him to be a member of the local community committed to the good government and continuing viability of the School.”.

11.—(1) This paragraph applies in relation to any grant-maintained school where—

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- (a) the governing body of the school are incorporated under Chapter IV of Part I of the 1988 Act; and
 - (b) the school was a voluntary school immediately before it became grant-maintained.
- (2) In relation to any school to which this paragraph applies, paragraph 13 of Schedule 7 to the Act shall have effect as if it provided for “foundation governor” to mean—
- (a) a person appointed otherwise than by a local education authority for the purpose of securing, so far as is practicable, that the established character of the school at the time when it became grant-maintained is preserved and developed and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it; or
 - (b) a person selected under section 66 or nominated under section 68 of the 1988 Act for the purpose referred to in paragraph (a) above.

PART III

OTHER TRANSITIONAL PROVISIONS.

12. Until the commencement of section 3 of the Act, the duty imposed on the Secretary of State by section 220(3) of the Act to give notice in writing of an order made under that section to the funding authority shall not apply where the school concerned is in England.

13. Until the commencement of Chapter VII of Part II of the Act, section 222(3)(a) of the Act shall have effect as if for “Chapter VII of Part II” there were substituted “section 89 or 91 of the Education Reform Act 1988”.

14. Section 268(2) of the Act shall not have effect to require a local education authority or governing body to indemnify the members of any appeal committee to which that section applies against any legal costs or expenses which are incurred by those members in connection with any decision or action taken by them before 1st January 1994.

15.—(1) Sub-paragraph (2) below applies where—

- (a) a local education authority have before 1st January 1994 submitted a scheme (within the meaning of section 33 of the 1988 Act) to the Secretary of State for his approval in accordance with section 35(3) of that Act (as it had effect before that date); but
- (b) the decision whether or not to approve the scheme has not been made before that date.

(2) Where this sub-paragraph applies the scheme shall be treated after 1st January 1994 as if it were proposals submitted in accordance with section 35(3) of the 1988 Act (as substituted by section 274(2) of the Act).

(3) Where on 1st January 1994 the period of two months has not elapsed since a notice was given in accordance with section 35(7) of the 1988 Act (as it had effect before that date), that notice shall have effect for the purposes of section 35(6) of the 1988 Act (as substituted by section 274 of the Act) as if it were given under subsection (5) of that section (as so substituted).