



Education Act 1968

1968 CHAPTER 17

An Act to amend the law as to the effect of and procedure for making changes in the character, size or situation of county schools or voluntary schools to enable special age limits to be adopted for existing as well as for new schools, and to make certain other amendments as to the approval or provision of school premises; and for purposes connected therewith. [10th April 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Changes in character, size or situation of schools.

(1) For purposes of the Education Acts 1944 to 1967 and any other enactment relating to the duties of a local education authority, references in whatever terms to discontinuing a school (and, in particular, those in section 13 of the Education Act 1944 to a local authority ceasing to maintain a county school or a voluntary school), or to establishing a new school, shall not be read as applying by reason of any change which is made to an existing school—

- (a) by education beginning or ceasing to be provided for pupils above or below a particular age; or
- (b) by education beginning or ceasing to be provided for girls as well as boys, or for boys as well as girls; or
- (c) by any enlargement or alteration of the school premises or transfer of the school to a new site ;

and the school existing before an event mentioned in paragraph (a), (b) or (c) above shall be regarded as continuing despite that event and as being the same school before and after that event (unless it is to be regarded for other reasons as discontinued).

(2) In section 13 of the Education Act 1944 (which regulates, among other things, the procedure to be followed where a local education authority intend to establish, maintain or cease to maintain a school as mentioned in subsection (1), or where persons

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propose that a school should be maintained as a voluntary school as mentioned in subsection (2)) subsections (1) and (2) shall be amended as follows:—

- (a) in subsection (1) there shall be inserted after paragraph (c) the words " or where a local education authority intend to make any significant change in the character, or significant enlargement of the premises, of a county school "; and
- (b) in subsection (2) there shall be inserted after the words " as a voluntary school " the words " or where the managers or governors of a school maintained by a local education authority as a voluntary school intend to make any significant change in the character, or significant enlargement of the premises, of the school" ;

and at the end of that section there shall be added as new subsections (9) and (10)—

“(9) Where proposals are made under this section for the enlargement of school premises, subsections (6) and (7) shall apply, with the necessary adaptations, as they apply in the case of proposals for the establishment of a new school (any reference to the persons by whom the proposed school is to be established being read as a reference to the managers or governors).

(10) References in this section to a change in the character of a school include in particular changes in character resulting from education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as for girls, or for girls as well as for boys, or from the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude”.

- (3) In the enactments mentioned in Schedule 1 to this Act there shall be made the amendments provided for by that Schedule, being amendments arising out of or related to the provisions in subsections (1) and (2) above; and the enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.
- (4) Subsection (1) above shall be deemed to have had effect since the beginning of April 1945 in so far as the effect is—
 - (a) that a school is to be or have been regarded as being the same school before and after any such event as is there mentioned; or
 - (b) that anything may be or have been lawfully done without proposals being approved under section 13 of the Education Act 1944.
- (5) Subject to subsection (4) above, this section shall not apply in relation to things proposed to be done before the end of the summer term 1968, nor in relation to proposals approved before then under section 13 of the Education Act 1944 or to anything done or to be done in pursuance of any such proposals; and for this purpose " summer term " means, in the case of any school, the term ending last before the month of September.

2 Schools with special age limits.

Section 1 of the Education Act 1964 (which enables new county or voluntary schools to be established to provide both primary and secondary education) shall apply where it is proposed that an existing school maintained or to be maintained by a local education authority should provide both primary and secondary education, and accordingly in subsection (1) of that section—

- (a) for the words from " Where a local education authority intend to establish a new county school" to "for that purpose " there shall be substituted the words

" Where proposals with respect to a school maintained or to be maintained by a local education authority are submitted "; and

- (b) for the word " established " in paragraph (b) there shall be substituted the words " a school " .

3 Approval or provision of school premises (miscellaneous amendments).

(1) In section 13 of the Education Act 1944—

- (a) in subsection (6) (which requires submission to the Secretary of State of specifications and plans of the school premises of a proposed new county or voluntary school) after the words " specifications and plans of the school premises " there shall be inserted the words " if the premises are new premises (that is to say, if the premises do not comprise buildings used for a school at the time when the proposals are approved) or if the Secretary of State so directs "; and
- (b) in subsection (7) (which requires those concerned to give effect to proposals for a new school after the proposals, specifications and plans have been approved under the section) after the words " under this section " there shall be inserted the words " or, in a case where specifications and plans are not required, when the proposals have been so approved and the Secretary of State has notified the authority or persons by whom the proposed school is to be established that specifications and plans will not be required ", and after the words " so approved " there shall be inserted the words " (if any) " .

(2) In section 7(2) of the Education (Miscellaneous Provisions) Act 1948 (which enables the prescribed standards for school premises to be relaxed by the Secretary of State in approving specifications and plans of a new school under section 13(6) of the Education Act 1944, and does so by reference to the proviso to section 10(2) of that Act as set out in subsection (1) of the said section 7) after paragraph (b) there shall be inserted the words " or if the Secretary of State is satisfied, on the submission to him of the specifications and plans of the school premises where the premises are to comprise the existing site or buildings of another school, as to the matters mentioned in paragraph (a) set out in the preceding subsection " .

(3) In the proviso to section 10(2) of the Education Act 1944, as set out in section 7(1) of the Education (Miscellaneous Provisions) Act 1948 (which proviso enables the Secretary of State in certain circumstances to permit school premises not to conform to the prescribed standards) for the words " having regard to shortage of labour or materials" in paragraph (c) there shall be substituted the words " having regard to the need to control public expenditure in the interests of the national economy " .

(4) If upon representations made to him by a local education authority the Secretary of State is satisfied—

- (a) that the managers or governors of a voluntary school propose to make a significant enlargement of the school premises or alterations to those premises, and that it is desirable for them to do so for the better provision of primary or secondary education at the premises, or for securing that there is available for the area of the authority a sufficiency of suitable primary or secondary schools, or for both those reasons ; and
- (b) that, having regard to the need to control public expenditure in the interests of the national economy, it is not reasonably practicable to effect the enlargement or alterations by providing permanent accommodation;

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then, subject to proposals for any significant enlargement being approved under section 13 of the Education Act 1944, the Secretary of State may authorise the authority to provide, or assist in providing, temporary accommodation in accordance with arrangements approved by him; and Schedule 1 to the Education Act 1946 (which relates to the duties of the local education authority and the managers or governors with regard to the provision of sites and buildings for voluntary schools) shall not apply in relation to temporary accommodation provided by virtue of this subsection.

4 Expenses.

There shall be paid out of moneys provided by Parliament any increase attributable to this Act in the sums so payable under the Education Acts 1944 to 1967.

5 Text of certain provisions as amended by this Act.

- (1) In accordance with the provisions of this Act (apart from the transitional provisions in section 1(5)), the following sections, namely,—
 - section 13 of the Education Act 1944 ;
 - section 1 of the Education Act 1946 ; and
 - section 7 of the Education (Miscellaneous Provisions) Act 1948;are to have effect as set out in Schedule 3 to this Act with the amendments made by this Act, by the Secretary of State for Education and Science Order 1964 and by the provisions listed in subsection (2) below, but without prejudice to the operation of any enactment affecting the operation of those sections and not so listed.
- (2) The provisions above referred to, as regards provisions by which section 13 of the Education Act 1944 is amended, are—
 - The Education Act 1946, section 14 and Part II of Schedule 2; and
 - The Education (Miscellaneous Provisions) Act 1953, section 16, and section 17 and Schedule 1;and, as regards provisions by which section 1 of the Education Act 1946 is amended, are—
 - The Education (Miscellaneous Provisions) Act 1953, section 3 ; and
 - The Education Act 1967, section 2.

6 Short title, citation, construction and extent.

- (1) This Act may be cited as the Education Act 1968 and this Act and the Education Acts 1944 to 1967 may be cited together as the Education Acts 1944 to 1968.
- (2) This Act shall be construed as one with the Education Acts 1944 to 1967.
- (3) This Act does not extend to Scotland or to Northern Ireland.

SCHEDULE 1

Section 1.

ADDITIONAL AMENDMENTS AS TO CHANGES IN CHARACTER, SIZE, OR SITUATION OF SCHOOLS

- 1 In section 16(1) of the Education Act 1944 there shall be omitted the words " and any transfer so authorised shall not be deemed, for the purposes of this Act, to constitute the discontinuance of the school or the establishment of a new school " ; and in their place there shall be inserted the words " and a voluntary school shall not be transferred to a new site without the authority of an order under this subsection " .
- 2 In section 17 of the Education Act 1944 there shall be added as a new subsection (6)
—
“(6) Where proposals for a significant change in the character of a voluntary school are approved under section 13 of this Act, then, without prejudice to the power to vary orders conferred by section 111, the Secretary of State may by order make such variations of the articles of government (if the school is a secondary school), or such modifications authorised by subsection (4) of this section in the provisions of a trust deed, as appear to him to be required in consequence of the proposed change in the character of the school; and so much of subsection (5) of this section as relates to the making of representations with respect to orders under this section shall not apply to an order made in pursuance only of the power conferred by this subsection.”
- 3 For section 67(4) of the Education Act 1944 there shall be substituted—
“(4) If in the case of a county or voluntary school a question arises whether a change in the character of the school or enlargement of the school premises would be a significant change or enlargement, that question shall be determined by the Secretary of State.”
- 4 (1) Section 102 (payment of maintenance contributions by the Secretary of State) of the Education Act 1944 shall be amended—
 - (a) by inserting immediately before the proviso the words " and may pay the managers or governors of any aided school or special agreement school maintenance contributions not exceeding four-fifths of any sums expended by them on the provision of a site or of school buildings in pursuance of proposals approved under section 13 of this Act for a significant enlargement of the school premises " ; and
 - (b) by adding at the end of the proviso " nor shall a maintenance contribution be payable under this section in respect of any expenditure incurred by the managers or governors of a special agreement school in pursuance of proposals for a significant enlargement of the school premises, being proposals to which the special agreement for the school relates " .
 - (2) In section 105(2) of the Education Act 1944 (which lists in paragraphs (a) to (d) the initial expenses qualifying, in the case of an aided or special agreement school, for loans under the section) for paragraph (c) there shall be substituted—
 - “(c) (i) expenses to be incurred in providing a site or school buildings on a significant enlargement of the school premises, being expenses in respect of which a maintenance contribution may be paid ;

- (ii) expenses to be incurred in providing school buildings on a site to which the school is to be transferred under the authority of an order under section 16(1) of this Act;
- (iii) expenses to be incurred in providing a site or school buildings for a new school which by virtue of an order under section 16(2) of this Act is deemed to be in substitution for a discontinued school or schools”.

5 In section 114(1) of the Education Act 1944 the existing definition of " alterations " shall be omitted and, at the places required by the alphabetical order in section 114(1), there shall be inserted the following definitions:—

- (a) " alterations ", in relation to any school premises, includes improvements, extensions and additions, but does not include any significant enlargement of the school premises ;
- (b) " enlargement", in relation to any school premises, includes any modification of the existing premises which has the effect of increasing the number of pupils for whom accommodation can be provided, and " enlarge " shall be construed accordingly;
- (c) " significant", in relation to a change in the character of a school or an enlargement of school premises, implies that there is a substantial change in the function or size of the school.

6 In section 1(1) of the Education Act 1946 (of which the text, as amended, is set out in Schedule 3 to this Act) for paragraph (a) there shall be substituted—

- “(a) that there should be a significant enlargement of the school premises ; and”.

7 In section 7 of the Education (Miscellaneous Provisions) Act 1948 (of which the text, as amended, is set out in Schedule 3 to this Act), after subsection (2), there shall be inserted as a new subsection (2A)—

“(2A) Notwithstanding the provisions of section 13 of the principal Act as to conformity to the prescribed standards, the Secretary of State may approve specifications and plans submitted to him under that section in connection with proposals for a significant enlargement of school premises in any case where he could under subsection (2) of this section do so if they were specifications and plans of the school premises of a new school proposed to be established”;

and in subsection (3) after the words " This section " there shall be inserted the words " except subsection (2A) ";

8 In section 31(5) of the London Government Act 1963 (which provides that in Greater London schools maintained by a local education authority before April 1965 shall not cease to be so maintained except as there mentioned) for the words " except in accordance with section 13 or 14 of the said Act of 1944 " there shall be substituted the words " except in accordance with the Education Acts 1944 to 1968 ".

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SCHEDULE 2

Section 1.

REPEALS

Chapter	Short title	Extent of repeal
9 & 10 Geo. 6. c. 50.	The Education Act 1946.	Section 1(2). In Part II of Schedule 2, the entry relating to section 114 of the Education Act 1944.
1 & 2 Eliz. 2. c. 33.	The Education (Miscellaneous Provisions) Act 1953.	In section 2(a), the words " (otherwise than by way of enlargement of an existing school)". Section 8(3)(b), together with the word " and " at the end of section 8(3)(a).
1967 c. 3.	The Education Act 1967.	Section 1(2)(b), together with the word " or " at the end of section 1(2)(a).

SCHEDULE 3

Section 5.

ENACTMENTS REPRINTED WITH AMENDMENTS

A: Education Act 1944 s.13

- “13 (1) Where a local education authority intend—
- to establish a new county school;
 - to maintain as a county school any school which at the time being is not such a school; or
 - to cease to maintain any county school or, save as provided by the next following section of this Act, any voluntary school;
- or where a local education authority intend to make any significant change in the character, or significant enlargement of the premises, of a county school, they shall submit proposals for that purpose to the Secretary of State.
- Where any persons propose that any school established by them or by persons whom they represent which at the time being is not a voluntary school, or any school proposed to be so established, should be maintained by a local education authority as a voluntary school, or where the managers or governors of a school maintained by a local education authority as a voluntary school intend to make any significant change in the character, or significant enlargement of the premises, of the school, they shall after consultation with the authority submit proposals for that purpose to the Secretary of State.
 - After any proposals have been submitted to the Secretary of State under this section, the authority or persons by whom the proposals were submitted shall forthwith give public notice of the proposals in the prescribed manner, and the managers or governors of any voluntary school affected by the proposals or any ten or more local government

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electors for the area and any local education authority concerned may within two months after the first publication of the notice submit to the Secretary of State objections to the proposals:

Provided that this subsection shall not have effect in the case of proposals for the maintenance as a voluntary school of a school which is at the time being a school in respect of which grants are made by the Secretary of State, if the proposals are made with the concurrence of the authority and of the proprietor of the school and of any trustees in whom is vested any interest in the school premises.

- (4) Any proposals submitted to the Secretary of State under this section may be approved by him after making such modifications therein, if any, as appear to him to be desirable:

Provided that the Secretary of State shall not approve proposals for the maintenance as a county school of any school which, at the time being, is a voluntary school, unless he has, in accordance with the provisions of the Second Schedule to this Act, approved an agreement made under the powers conferred by that Schedule between the authority and the managers or governors of the school for the transfer to the authority of all necessary interests in the school premises.

- (5) A local education authority shall not, without the leave of the Secretary of State do or undertake to do anything (whether or not provided for by the development plan for the area) for which proposals are required by this section to be submitted to the Secretary of State until such proposals have been approved by him.

- (6) After proposals for the establishment of a new school have been approved by the Secretary of State under this section, the authority or persons by whom the proposed school is to be established shall, unless they do not intend to give effect to the proposals, submit to him in such form and in such manner as he may direct specifications and plans of the school premises if the premises are new premises (that is to say, if the premises do not comprise buildings used for a school at the time when the proposals are approved) or if the Secretary of State so directs ; and the Secretary of State, on being satisfied that the school premises will conform to the prescribed standards, may approve the specifications and plans:

Provided that, before submitting specifications and plans in respect of a school which is to be maintained as a voluntary school, the persons by whom the school is to be established shall consult the local education authority.

- (7) When the proposals specifications and plans for a new school have been approved by the Secretary of State under this section or, in a case where specifications and plans are not required, when the proposals have been so approved and the Secretary of State has notified the authority or persons by whom the proposed school is to be established that specifications and plans will not be required, it shall be the duty of the authority or persons by whom the proposed school is to be established to give effect to the proposals in accordance with the specifications and plans so approved (if any), except that in the case of proposals submitted under subsection (2) of this section the duty of providing playing fields and any buildings which are to form part of the school premises but are not to be school buildings shall be the duty of the local education authority.

- (8) When proposals for the maintenance of any school have been approved by the Secretary of State under this section, it shall be the duty of the local education authority to maintain it; and an authority shall not be under any duty to maintain a school after proposals that the authority shall cease to maintain it have been approved by the Secretary of State under this section.

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- (9) Where proposals are made under this section for the enlargement of school premises, subsections (6) and (7) shall apply, with the necessary adaptations, as they apply in the case of proposals for the establishment of a new school (any reference to the persons by whom the proposed school is to be established being read as a reference to the managers or governors).
- (10) References in this section to a change in the character of a school include in particular changes in character resulting from education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as for girls, or for girls as well as for boys, or from the making or alteration of arrangements for the admission of pupils by reference to ability or aptitude.”

B: Education Act 1946 s.1

- “1 (1) If upon the application of a local education authority and the managers or governors of a controlled school maintained by the authority the Secretary of State is satisfied—
- (a) that there should be a significant enlargement of the school premises ; and
 - (b) either—
 - (i) that the enlargement is wholly or mainly required for the purpose of providing accommodation for pupils for whom accommodation would have been provided in some other voluntary school if that other school had not been discontinued or had not otherwise ceased to be available for the purpose ; or
 - (ii) that the enlargement is desirable for the better provision of primary or secondary education at the premises to be enlarged or for securing that there is available for the area of the authority a sufficiency of suitable primary or secondary schools or for both those reasons ;
- then, If proposals for carrying out the enlargement are thereafter approved under section 13 of the Education Act 1944 (hereinafter referred to as " the principal Act"), the Secretary of State may by order direct that the expense of giving effect to those proposals shall be paid by the local education authority.”

C: Education (Miscellaneous Provisions) Act 1948 s.7

- “7 (1) For the proviso to subsection (2) of section ten of the principal Act (which empowers the Secretary of State to give such a direction as is therein mentioned where he is satisfied that it would be unreasonable in the case of any particular school to require conformity in any particular respect with the requirements of the regulations as to the prescribed standards as to the premises of schools), the following proviso shall be substituted, that is to say—
- “Provided that, if the Secretary of State is satisfied with respect to any school—
- (a) that having regard to the nature of the existing site or to any existing buildings thereon or to other special circumstances affecting the school premises it would be unreasonable to require conformity with a requirement of the regulations as to any matter, or
 - (b) where the school is to have an additional or new site that, having regard to shortage of suitable sites it would be unreasonable to require conformity with a requirement of the regulations relating to sites, or
 - (c) where the school is to have additional buildings or is to be transferred to a new site, and existing buildings not theretofore part of the school

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premises, or temporary buildings, are to be used for that purpose, that having regard to the need to control public expenditure in the interests of the national economy it would be unreasonable to require conformity with a requirement of the regulations relating to buildings,

he may give a direction that, notwithstanding that that requirement is not satisfied, the school premises shall, whilst the direction remains in force, be deemed to conform to the prescribed standards as respects matters with which the direction deals if such conditions, if any, as may be specified in the direction as respects those matters are observed.”

(2) Where it is proposed to establish a new school to be maintained by a local education authority, if the Secretary of State is satisfied, on the submission to him of the specifications and plans of the school premises, either—

- (a) with respect to the site of the school, as to the matters mentioned in paragraph (b) set out in the preceding subsection, or
- (b) with respect to buildings where the school is to be established in premises comprising existing buildings or temporary buildings, as to the matters mentioned in paragraph (c) set out in the preceding subsection,

or if the Secretary of State is satisfied, on the submission to him of the specifications and plans of the school premises where the premises are to comprise the existing site or buildings of another school, as to the matters mentioned in paragraph (a) set out in the preceding subsection, he may (notwithstanding the provisions of section thirteen of the principal Act as to conformity to the prescribed standards) approve the specifications and plans, and may undertake to give a direction as to the school under the proviso to subsection (2) of section ten of the principal Act on the school's being established.

(2A) Notwithstanding the provisions of section 13 of the principal Act as to conformity to the prescribed standards, the Secretary of State may approve specifications and plans submitted to him under that section in connection with proposals for a significant enlargement of school premises in any case where he could under subsection (2) of this section do so if they were specifications and plans of the school premises of a new school proposed to be established.

(3) This section, except subsection (2A), shall be deemed to have had effect since the commencement of Part II of the principal Act.”