



# Education (No. 2) Act 1986

## 1986 CHAPTER 61

### PART II

#### SCHOOL GOVERNMENT

##### *Governing bodies*

### **3 Governing bodies for county, controlled and maintained special schools.**

- (1) This section applies in relation to any county, controlled or maintained special school.
- (2) The instrument of government for such a school which has less than 100 registered pupils shall, subject to section 7 of this Act, provide for the governing body to consist of the following (and no others)—
  - (a) two parent governors;
  - (b) two governors appointed by the local education authority;
  - (c) one teacher governor;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) two foundation governors and one co-opted governor, in the case of a controlled school; or
    - (ii) three co-opted governors, in any other case.
- (3) The instrument of government for such a school which has more than 99, but less than 300, registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
  - (a) three parent governors;
  - (b) three governors appointed by the local education authority;
  - (c) one teacher governor;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—

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- (i) three foundation governors and one co-opted governor, in the case of a controlled school; or
  - (ii) four co-opted governors, in any other case.
- (4) The instrument of government for such a school which has more than 299, but less than 600, registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
- (a) four parent governors;
  - (b) four governors appointed by the local education authority;
  - (c) two teacher governors;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) four foundation governors and one co-opted governor, in the case of a controlled school; or
    - (ii) five co-opted governors, in any other case.
- (5) The instrument of government for such a school which has more than 599 registered pupils shall, subject to section 7, provide for the governing body to consist of the following (and no others)—
- (a) five parent governors;
  - (b) five governors appointed by the local education authority;
  - (c) two teacher governors;
  - (d) the head teacher, unless he chooses not to be a governor; and
  - (e) either—
    - (i) four foundation governors and two co-opted governors, in the case of a controlled school; or
    - (ii) six co-opted governors, in any other case.
- (6) Where the instrument of government so provides, a school to which subsection (5) above would otherwise apply shall be treated for the purposes of this section as one to which subsection (4) above applies.
- (7) Where the head teacher is a governor he shall be treated for all purposes as being an ex officio governor.

**Modifications etc. (not altering text)**

**C1** S. 3(2)(b)(3)(b)(4)(b)(5)(b) excluded (1.1.1994) by 1993 c. 35, s. 214(4)(9); S.I. 1993/3106, art. 4, Sch.1

**4 Governing bodies for aided and special agreement schools.**

- (1) This section applies in relation to any aided or special agreement school.
- (2) The instrument of government for such a school shall provide for the governing body to include—
- (a) at least one governor appointed by the local education authority;
  - (b) in the case of a school which is a primary school serving an area in which there is a minor authority, at least one governor appointed by the authority;
  - (c) foundation governors;

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- (d) at least one parent governor;
  - (e) in the case of a school which has less than 300 registered pupils, at least one teacher governor;
  - (f) in the case of a school which has 300 or more registered pupils, at least two teacher governors; and
  - (g) the head teacher, unless he chooses not to be a governor.
- (3) The instrument of government for such a school shall provide—
- (a) for such number of foundation governors as will lead to their outnumbering the other governors—
    - (i) by two, if the governing body of the school will consist of eighteen or fewer governors; and
    - (ii) by three, if it will consist of more than eighteen governors; and
  - (b) for at least one of the foundation governors to be (at the time of his appointment) a parent of a registered pupil at the school.
- (4) Where the head teacher of such a school has chosen not to be a governor, he shall nevertheless be counted as one for the purposes of calculating the required number of foundation governors.
- (5) Subject to subsection (3) above, nothing in this section shall be taken to prevent the instrument of government for such a school from providing for the governing body to include governors in addition to those required by virtue of this section.
- (6) Where the head teacher is a governor he shall be treated for all purposes as being an ex officio governor.

**Modifications etc. (not altering text)**

C2 S. 4(3) excluded (1.1.1994) by 1993 c. 35, s. 214(8)(9); S.I. 1993/3106, art. 4, Sch.1

VALID FROM 01/01/1994

**4A <sup>F1</sup>Sponsor governors for aided secondary schools.**

- (1) The instrument of government for any aided secondary school shall, if a direction under this section so requires—
- (a) name as a sponsor of the school a person specified in the direction, and
  - (b) provide for the governing body of the school to include such number of governors appointed by the sponsor, not exceeding four, as is so specified.
- (2) A direction under this section in respect of a school, other than a direction under subsection (4) or (5) below—
- (a) may only be given at the request, or with the consent, of the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (3) A direction under this section varying or revoking a previous direction—

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- (a) may only be made after consulting the governing body, and
  - (b) may make provision (including the modification of any provision made by or under this Act) as to the time by which a new instrument of government is to be made and the consent and consultation which is to be required before it is made.
- (4) Where proposals approved under section 13 of the Education Act 1980 (establishment and alteration of voluntary schools)—
- (a) provide for a secondary school to be maintained by the local education authority as a voluntary school,
  - (b) name a person as a sponsor of the school, and
  - (c) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,
- the Secretary of State shall, if he makes an order under section 15 of the Education Act 1944 (classification of schools) directing that the school be an aided school, give a direction under this section for the purpose of implementing the proposals.
- (5) Where an order under section 54 of this Act directs that a secondary school be an aided school and the proposals published by the governing body under that section—
- (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body of the school to include a specified number of governors, not exceeding four, appointed by the sponsor,
- the Secretary of State shall give a direction under this section for the purpose of implementing the proposals.
- (6) Where the instrument of government for any aided secondary school names two or more persons as sponsors of the school—
- (a) the number of governors appointed under the instrument by virtue of this section may not exceed four, and
  - (b) the instrument may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (7) Where in pursuance of this section the instrument of government for a school names a person as a sponsor of the school, section 4(3)(a) of this Act shall have effect as if it required the instrument to provide for such number of foundation governors as will lead to their outnumbering the other governors by two.
- (8) In this section “direction” means a direction contained in an order made by the Secretary of State; but section 63(1) of this Act shall not apply to the power of the Secretary of State to make orders under this section.

#### Textual Amendments

**F1** S. 4A inserted (1.1.1994) by 1993 c. 35, s. 271(1); S.I. 1993/3106, art. 4, Sch.1

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## Governors

### 5 Appointment of parent governors by governing body.

- (1) The instrument of government for any county or controlled school, or for any maintained special school which is not established in a hospital, may provide that if at the time when the instrument is made, or at any later time when there is a vacancy for a parent governor—
  - (a) at least fifty per cent. of the registered pupils at the school are boarders; and
  - (b) it would, in the opinion of the local education authority, be impracticable for there to be an election of parent governors;the parent governors, or (as the case may be) the parent governor required to fill that vacancy, shall be appointed by the other members of the governing body.
- (2) The instrument of government for every county, controlled and maintained special school at which parent governors are to be, or may be, elected shall provide for the required number of parent governors to be made up by parent governors appointed by the other members of the governing body if—
  - (a) one or more vacancies for parent governors are required to be filled by election; and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies.
- (3) Where, in the opinion of the local education authority, it is likely to be impracticable for there to be elections of parent governors at any maintained special school which is established in a hospital, the instrument of government for that school may provide for the parent governors to be appointed by the other members of the governing body.
- (4) The instrument of government for any school to which this section applies shall provide for it to be the duty of governors—
  - (a) in appointing any parent governor under any provision made by virtue of this section—
    - (i) to appoint a person who is the parent of a registered pupil at the school, where it is reasonably practicable to do so; and
    - (ii) where it is not, to appoint a person who is the parent of one or more children of compulsory school age;
  - (b) not to appoint any person as a parent governor, under any such provision, if that person is—
    - (i) an elected member of the local education authority;
    - (ii) an employee of the authority or of the governing body of any aided school maintained by the authority; or
    - (iii) a co-opted member of any education committee of the authority.

### 6 Connection with local business community.

The instrument of government for any county, controlled or maintained special school shall provide for it to be the duty of the governors concerned, in co-opting any person to be a member of the governing body (otherwise than as a foundation governor)—

- (a) to have regard—
  - (i) to the extent to which they and the other governors are members of the local business community; and

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- (ii) to any representations made to the governing body as to the desirability of increasing the connection between the governing body and that community; and
- (b) where it appears to them that no governor of the school is a member of the local business community, or that it is desirable to increase the number of governors who are, to co-opt a person who appears to them to be a member of that community.

## 7 Appointment of representative governors in place of co-opted governors.

- (1) The instrument of government for every primary school which is a county or controlled school serving an area in which there is a minor authority shall provide for one governor to be appointed by that authority.
- (2) The instrument of government for every maintained special school which is established in a hospital shall provide
  - [<sup>F2</sup>(a) in the case of a hospital vested in the Secretary of State, for one governor to be appointed by the District Health Authority; and
  - (b) in the case of a hospital vested in a National Health Service trust, for one governor to be appointed by that trust.]
- (3) The instrument of government for every maintained special school (other than one established in a hospital) shall, if the school has less than 100 registered pupils, provide for one governor to be appointed—
  - (a) by a voluntary organisation designated by the local education authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised; or
  - (b) jointly by two or more voluntary organisations so designated;
 and shall, if it has more than 99 registered pupils, provide for two governors to be so appointed.
- (4) Where, by virtue of subsection (3) above, an instrument of government is required to provide for the appointment of two governors, it may make different provision in relation to the appointment of one governor to that made in relation to the appointment of the other.
- (5) Where a local education authority are satisfied, in relation to any special school, that there is no voluntary organisation which it would be appropriate to designate for the purposes of subsection (3) above, that subsection shall not apply to its instrument of government.
- (6) Where the instrument of government for any school is required by this section to provide for the appointment of any governor, the instrument—
  - (a) shall name the person or persons by whom the governor is to be appointed;
  - (b) shall not provide for a co-opted governor if the school is a controlled school with less than 600 registered pupils or is treated as such a school for the purposes of section 3 of this Act by virtue of subsection (6) of that section; and
  - (c) in any other case, shall provide for one or (as the case may be) two fewer co-opted governors than would otherwise be provided for.
- (7) In subsection (6) above, references to co-opted governors are to governors required to be co-opted by virtue of section 3 of this Act and do not include references to co-opted foundation governors.

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### Textual Amendments

- F2** S. 7(2)(a)(b) substituted for words by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 31](#)

## 8 Governors' proceedings and tenure of office.

- (1) The proceedings of the governing body of any county, voluntary or maintained special school shall not be invalidated by—
  - (a) any vacancy among their number; or
  - (b) any defect in the election or appointment of any governor.
- (2) The instrument of government for every county, controlled and maintained special school shall provide for each governor, other than one who is an ex officio governor, to hold office for a term of four years.
- (3) Subsection (2) above shall not be taken to prevent a governor from being elected or appointed for a further term, or from being disqualified, by virtue of regulations made under subsection (6) below, for continuing to hold office.
- (4) Any governor of a county, voluntary or maintained special school may at any time resign his office.
- (5) Any foundation governor of a voluntary school, or governor of a county, voluntary or maintained special school appointed otherwise than by being co-opted, may be removed from office by the person or persons who appointed him.

For the purposes of this subsection, a governor appointed in accordance with any provision made by virtue of section 5 of this Act shall be treated as having been co-opted.

- (6) The Secretary of State may by regulations make provision as to the meetings and proceedings of the governing bodies of county, voluntary and maintained special schools (including provision modifying that made by subsection (1) above) and the circumstances in which persons are to be disqualified for holding office as governors of such schools.
- (7) The regulations may, in particular, provide—
  - (a) for the election by the governors of any such school of one of their number to be chairman, and one to be vice-chairman, of the school's governing body for such period as may be prescribed;
  - [<sup>F3</sup>(aa) for the establishment of committees by the governing bodies of such schools (whether or not including persons who are not members of the governing body concerned) and for the constitution, meetings and proceedings of such committees;
  - (ab) for the delegation of functions of the governing body of any such school in prescribed circumstances to committees established by that body, to any member of that body or to the head teacher;]
  - (b) for the chairman of the governing body of any such school, or such other member of that body as may be prescribed, to have power in prescribed circumstances to discharge any of the functions of that body as a matter of urgency; and

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- (c) as to the quorum required for the purposes of making appointments in accordance with any provision made by virtue of section 5 of this Act or when business is transacted by governors of a particular category.
- (8) The minutes of the proceedings of the governing body of any county, voluntary or maintained special school shall be open to inspection by the local education authority.
- (9) The instrument of government for every county, voluntary and maintained special school may make provision with respect to the matters mentioned in subsections (6) and (7) above.
- (10) Any provision made by the instrument of government for any such school which relates to a matter dealt with by regulations under subsection (6) above (including any provision made by virtue of subsection (2) above) shall have effect subject to the regulations.
- (11) No decision of a kind mentioned in subsection (12) below which is taken at a meeting of the governing body of any aided or special agreement school shall have effect unless it is confirmed at a second meeting of the governing body held not less than twenty-eight days after the first.
- (12) The decisions are—
- (a) any decision that would result in the submission of proposals under section 13 of the 1980 Act (establishment and alteration of voluntary schools);
  - (b) any decision to serve a notice under section 14(1) of the 1944 Act (discontinuance of school);
  - (c) any decision that would result in an application under section 15(4) of the 1944 Act (revocation of order whereby school is an aided or special agreement school);
  - (d) any decision to request the making of an order under subsection (2) of section 16 of the 1944 Act (discontinuance of school for which another school is substituted) or as to the submissions to be made to the Secretary of State in any consultations under subsection (3) of that section;
  - (e) any decision to make an agreement under Schedule 2 to the 1944 Act (agreement for transfer of interest in school to local education authority).

#### Subordinate Legislation Made

**P1** S. 8: power previously exercised by S.I. 1987/1359, 1989/1503

**P2** S. 8(6)(7): s. 8(6) (with ss. 8(7), 63 and Sch. 2 para. 10(4)) power exercised (17.12.1991) by S.I.1991/2845

#### Textual Amendments

**F3** S. 8(7)(aa)(ab) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 116, 118(1)(4), 231(7), 235(6)



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## Grouping of schools

### 9 Grouping of schools under single governing body.

- (1) Subject to the requirements as to consent imposed by section 10 of this Act, a local education authority may resolve that any two or more schools maintained by them shall be grouped for the purposes of this Part of this Act.
- (2) Where any schools are so grouped, they shall (subject to the following provisions of this section)—
  - (a) be treated for the purposes of this Part as a single school; and
  - (b) have a single governing body constituted under a single instrument of government.
- (3) For the purposes of this Part of this Act, a group shall be treated—
  - (a) as an aided school, if it contains at least one such school;
  - (b) as a special agreement school, if it contains at least one such school and paragraph (a) above does not apply;
  - (c) as a controlled school, if it contains at least one such school and neither paragraph (a) nor paragraph (b) above applies;
  - (d) as a maintained special school, if it consists only of such schools; and
  - (e) as a county school, if none of the preceding paragraphs apply.
- (4) Where any proposal or alteration of a kind mentioned in subsection (5) below relates to any school which is grouped with one or more other schools under this section, it shall be the duty of the local education authority—
  - (a) to review the grouping of those schools and to consider whether or not it should be brought to an end; and
  - (b) where the Secretary of State's consent to the grouping, or continued grouping, was at any time required by section 10 of this Act and the authority consider that the grouping should be continued—
    - (i) to report to him on the results of their review; and
    - (ii) to provide him with such information as he may reasonably require with a view to enabling him to consider whether or not the grouping should be brought to an end.
- (5) The proposals and alterations referred to in subsection (4) above are—
  - (a) any proposal under—
    - (i) section 16 of the 1944 Act (transfer of schools to new sites and substitution of new for old schools);
    - (ii) sections 12 to 15 of the 1980 Act (establishment, discontinuance and alteration of schools); or
    - (iii) section 54 of this Act;
  - (b) any alteration made to arrangements approved by the Secretary of State in accordance with regulations made under section 12 of the 1981 Act (approval of special schools); and
  - (c) any alteration in the status of an aided or special agreement school effected by an order of the Secretary of State under section 15(4) of the 1944 Act (revocation of order by virtue of which school is an aided or special agreement school).

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- (6) The Secretary of State may by order bring to an end any grouping under this section in respect of which his consent was at any time required by section 10 of this Act.
- (7) Any grouping under this section may also be brought to an end—
  - (a) if the group does not include any voluntary school, by resolution of the local education authority; and
  - (b) if it does include any such school—
    - (i) by resolution of the authority made with the agreement of the school’s governing body; or
    - (ii) by one year’s notice given either by the authority to the governing body or by the governing body to the authority.
- (8) Any order under section 1 of this Act embodying an instrument of government for two or more schools which are grouped under this section shall be deemed to have been revoked—
  - (a) in the case of a group which was established for a specified period, at the end of that period; or
  - (b) on the bringing to an end of the group in accordance with subsection (6) or (7) above.
- (9) Schedule 1 to this Act shall have effect for the purpose of making further provision in relation to schools grouped under this section.

## **10 Requirements as to consent to grouping.**

- (1) Before resolving to group any schools under section 9 of this Act, a local education authority shall obtain the consent of the Secretary of State to the proposed grouping unless—
  - (a) the group will consist only of two primary schools both of which serve substantially the same area;
  - (b) neither of the schools is a special school; and
  - (c) where they are in Wales, there is no significant difference between them in their use of the Welsh language.
- (2) The Secretary of State’s consent may be given subject to such conditions as he sees fit to impose with respect to the duration of the grouping to which his consent is given.
- (3) Where two primary schools have been grouped under section 9 in circumstances in which the Secretary of State’s consent was not required under subsection (1) above, his consent to their continuing to be so grouped shall be required if a change of circumstances occurs such that a proposal to group those schools under section 9 made after that change would require his consent under that subsection.
- (4) Where the Secretary of State’s consent is required to the grouping or continued grouping of any schools under section 9, sections 3 to 7 of this Act shall apply in relation to the group subject to such modifications (if any) as he may direct.
- (5) No local education authority may pass a resolution under section 9 applying to any voluntary school without first obtaining the consent of its governing body.
- (6) No local education authority may pass a resolution under section 9 applying to any county or maintained special school without first consulting its governing body.

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- (7) Any dispute as to whether, for the purposes of this section—
- (a) two primary schools are to be regarded as serving substantially the same area; or
  - (b) there is any significant difference between two primary schools in their use of the Welsh language;
- shall be determined by the Secretary of State.

### Reviews

## 11 Review of constitution of governing bodies of county, controlled and maintained special schools.

- (1) The constitution of the governing body of every county, controlled and maintained special school shall be reviewed in accordance with the provisions of this section on, or as soon as is reasonably practicable after, the occurrence of any event which is a relevant event in relation to the school.
- (2) In this section “relevant event”, in relation to any school, means any of the following—
- (a) the implementation of any proposal under—
    - (i) section 16(1) of the 1944 Act (transfer of schools to new sites);
    - (ii) section 12(1)(d) of the 1980 Act (alteration of county schools); or
    - (iii) section 13(1)(b) of the 1980 Act (alteration of voluntary schools);which provides for an increase in the number of registered pupils at the school;
  - (b) in the case of a maintained special school, the implementation of any proposal to change approved arrangements which provides for an increase in the number of registered pupils at the school;
  - (c) where no relevant event of a kind mentioned in paragraph (a) or (b) above has occurred in relation to the school before the fourth anniversary of the date on which the current instrument of government for the school was made, that anniversary;
  - (d) where any relevant event has previously occurred in relation to the school, the fourth anniversary of the latest such event.
- (3) Any review which is required by virtue of the occurrence of a relevant event of a kind mentioned in paragraph (a)(i), (ii) or (b) of subsection (2) above shall be carried out by the local education authority and any other review which is required by this section shall be carried out by the governing body.
- (4) Whenever the local education authority or governing body of a school are required to carry out a review under this section they shall consider whether—
- (a) the governing body are properly constituted;
  - (b) the provision made by the instrument of government for the school is in any respect different from that which a new instrument of government would be required to make.
- (5) Where the governing body of a school have carried out a review under this section and have established that the provision made by the instrument of government for the school is in one or more respects different from that which a new instrument of government for the school would be required to make, they shall report the fact to the local education authority.

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- (6) Where a relevant event of a kind mentioned in paragraph (a)(i), (ii) or (b) of subsection (2) above has occurred in relation to any school, the local education authority shall determine the date on which, for the purposes of this section, that event is to be taken to have occurred, and shall notify the governing body accordingly.
- (7) In this section “approved arrangements” means arrangements approved by the Secretary of State in accordance with regulations made under section 12 of the 1981 Act (approval of special schools).

### *Temporary governing bodies*

## **12 Temporary governing bodies for new schools.**

- (1) Where—
- (a) the Secretary of State has approved, under section 12 or 13 of the 1980 Act, any proposal of a kind mentioned in subsection (2) below; or
  - (b) a local education authority making any such proposal have determined, under section 12(7) of that Act, that it should be implemented;
- the local education authority shall make an arrangement for the constitution of a temporary governing body for the school (or proposed school) pending the constitution of its governing body under an instrument of government.
- (2) The proposals referred to in subsection (1) above are—
- (a) any proposal made by a local education authority—
    - (i) to establish a new county school; or
    - (ii) to maintain as a county school any school which is neither a county school nor a voluntary school; and
  - (b) any proposal that a relevant school should be maintained by a local education authority as a voluntary school.
- (3) Where a local education authority propose to establish a new special school, they shall make an arrangement for the constitution of a temporary governing body for the school—
- (a) at least one year before the date on which the first pupils are expected to be admitted; or
  - (b) on the day on which their resolution to establish the school is passed.
- (4) Where a proposal of a kind mentioned in subsection (2) above has been duly published, the local education authority may make an arrangement for the constitution of a temporary governing body in anticipation of the approval of the proposal by the Secretary of State or (as the case may be) of the determination by the authority that it should be implemented.
- (5) Where any proposal that a relevant school should be maintained by a local education authority as a controlled school has been duly published, the authority shall consult the promoters—
- (a) as to whether the power given to the authority by subsection (4) above should be exercised; and
  - (b) if the authority propose to exercise it, as to the date on which it should be exercised.

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- (6) Where any proposal that a relevant school should be maintained by a local education authority as an aided school has been duly published, the authority and the promoters shall consider—
  - (a) whether the power given to the authority by subsection (4) above should be exercised; and
  - (b) where they agree that it should, on what date the authority should exercise it.
- (7) Where, in a case falling within subsection (6) above, the authority and the promoters fail to agree on the question mentioned in paragraph (a) or on that mentioned in paragraph (b), either of them may refer the matter to the Secretary of State.
- (8) On any reference under subsection (7) above, the Secretary of State shall give such direction as he thinks fit.
- (9) In this section “relevant school”, in relation to any proposal, means a school which—
  - (a) was established by those making the proposal, or by persons whom they represent, and which is not a voluntary school; or
  - (b) is proposed to be so established.
- (10) Schedule 2 to this Act shall have effect for the purpose of supplementing this section.

*Miscellaneous and supplemental*

**13 Effect of change of circumstances on instrument of government.**

- (1) Any instrument of government to which this Act applies shall (subject to subsection (2) below and paragraph 3(2) of Schedule 2 to this Act) make such provision as is appropriate having regard to all the circumstances of the school as at the date on which the instrument is made.
- (2) Where a proposal of a kind mentioned in section 11(2)(a) or (b) of this Act has been implemented in relation to any school, the number of registered pupils at the school shall, for the purposes of subsection (1) above and until the number of registered pupils at the school reaches the maximum number of pupils provided for by the proposal, be deemed to be that maximum number.
- (3) Where subsection (2) applies in relation to any school, the local education authority or (in the case of a proposal under section 13(1)(b) of the 1980 Act) the governing body may determine that it shall cease to apply (but without prejudice to its operation in relation to the implementation of any further proposal).
- (4) Where the effect of any subsequent change in the circumstances of a school is that the provision made by the instrument of government for the school differs in any respect from the provision which a new instrument of government would be required to make, it shall be the duty of the local education authority (subject to subsection (7) below):—
  - (a) to vary the instrument of government in such manner as is required to remove any such difference; or
  - (b) to make a new instrument of government.
- (5) Any instrument of government to which this Act applies may make provision which would be appropriate in the event of such a change in the circumstances of the school as is anticipated by that provision (including in particular a change in the number of registered pupils at the school).

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- (6) No provision made by any such instrument in anticipation of a change in the number of registered pupils at the school shall have effect before it is established, by a review under section 11 of this Act, that a new instrument of government for the school in question would be required to make that provision.
- (7) For the purposes of subsection (4) above, any change in the number of registered pupils at a school occurring after the instrument of government for the school is made, or (as the case may be) varied, may be disregarded until a review under section 11 of this Act establishes that the provision made by the instrument differs in any respect from the provision which a new instrument of government for the school would be required to make.
- (8) Where subsection (2) above has applied in relation to any school but the local education authority or (as the case may be) governing body have subsequently determined that it should cease to apply, subsections (4) and (7) above shall have effect as if a change in the number of registered pupils at the school had occurred at the time when that determination was made.
- (9) Subsections (6) and (7) above do not apply to aided or special agreement schools.

#### **14 Adjustment in number of governors.**

- (1) Where—
  - (a) any county, controlled or maintained special school has more governors of a particular category than are provided for by the instrument of government for the school; and
  - (b) the excess is not eliminated by the required number of governors of that category resigning;
 such number of governors of that category as is required to eliminate the excess shall cease to hold office.
- (2) The governors who are to cease to hold office shall be selected on the basis of seniority, the longest serving governor being the first to be selected, and so on.
- (3) Where it is necessary for the purpose of subsection (2) above to select one or more governors from a group of equal seniority, it shall be done by drawing lots.
- (4) Subsections (2) and (3) above do not apply in relation to foundation governors.
- (5) The instrument of government for every controlled school shall make provision for the procedure to be adopted whenever subsection (1) above requires any foundation governor to cease to hold office.

#### **15 Miscellaneous.**

- (1) Where a school to which section 3 or 4 of this Act applies has more than one head teacher (whether or not as a result of two or more schools being grouped under section 9 of this Act), each of them shall be a governor unless he chooses not to be.
- (2) It shall be for the local education authority, in the case of a county, controlled or maintained special school, and for the governing body, in the case of an aided or special agreement school—
  - (a) to determine, for the purposes of an election of parent governors or teacher governors to the governing body, any question whether a person is—

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- (i) a parent of a registered pupil at the school; or
    - (ii) a teacher at the school; and
  - (b) to make all necessary arrangements for, and to determine all other matters relating to, any such election.
- (3) The power conferred by subsection (2)(b) above includes power to make provision as to qualifying dates but does not include power to impose any requirement as to the minimum number of votes required to be cast for a candidate to be elected.
- (4) Any such election which is contested must be held by secret ballot.
- (5) The arrangements made under subsection (2)(b) above shall, in the case of any election of a parent governor, provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he so prefers, by having his ballot paper returned to the school by a registered pupil at the school.
- (6) Where a vacancy for a parent governor of any county, voluntary or maintained special school is required to be filled by election, it shall be the duty of the appropriate authority to take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—
- (a) informed of the vacancy and that it is required to be filled by election;
  - (b) informed that he is entitled to stand as a candidate, and vote, at the election; and
  - (c) given an opportunity to do so.
- (7) The instrument of government for every voluntary school shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (8) The instrument of government for any voluntary school may provide for any foundation governorship to be held ex officio by the holder of an office named in the instrument.
- (9) The qualification of any person for election or appointment as a governor, of a particular category, of any county, voluntary or maintained special school, shall not have the effect of disqualifying him for election or appointment as a governor, of any other category, of that school.
- (10) No person shall at any time hold more than one governorship of the same county, voluntary or maintained special school.
- (11) Where the instrument of government for any county, voluntary or maintained special school provides for one or more governors to be appointed by persons acting jointly, any such appointment shall be made, in the event of failure on the part of those persons to make an agreed appointment—
- (a) by the Secretary of State; or
  - (b) in accordance with any direction given by him.
- (12) No instrument of government for any county, voluntary or maintained special school which provides for one or more persons to be co-opted, by governors, as members of the governing body of the school shall make any provision (otherwise than by virtue of section 6 of this Act) which has the effect of restricting those governors in their choice of person to co-opt.

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- (13) In subsection (12) above, references to co-opted governors are to governors required to be co-opted by virtue of section 3 of this Act and do not include references to co-opted foundation governors.
- (14) No person shall be qualified for membership of the governing body of any county, voluntary or maintained special school unless he is aged eighteen or over, at the date of his election or appointment.
- (15) In subsection (6) above, “appropriate authority” means—
- (a) the local education authority, in the case of a county, controlled or maintained special school; and
  - (b) the governing body, in the case of an aided or special agreement school.

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**Modifications etc. (not altering text)**

**C3** S. 15(2)–(6) applied by Education Reform Act 1988 (c. 40, SIF 41:1), ss. **70(3)**, 231(7), 235(6)

**C4** S. 15(2)–(6) applied (1.1.1994) by 1993 c. 35, ss. **60(5)(a)**, 61(3)(a), 76(1) (with s. 155(11)); S.I. 1993/3106, art. 4, **Sch. 1**



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