

## SCHEDULES

### SCHEDULE 2

Section 12 etc.

#### DISTRIBUTION OF FUNCTIONS WHERE ORDER MADE UNDER SECTION 12

##### PART I

###### INTRODUCTORY

- 1 (1) Where an order under section 12 of this Act is in force, the Education Acts shall have effect subject to—
  - (a) this Schedule, and
  - (b) the provisions of this Act which modify the effect of any provision of those Acts, or confer new functions, in respect of any area to which such an order applies.
- (2) In particular, to the extent that this Schedule governs the payments to be made to any local education authority or the governing body of any grant-maintained school in respect of charges by that authority or body for the provision of board and lodging (at a boarding school or otherwise than at school), the proviso to section 52(1) of the Education Act 1944 and section 111(2) to (6) of the Education Reform Act 1988 (charges) shall not apply; and in this Schedule section 52(1) of the Education Act 1944 and section 111(1) of the Education Reform Act 1988 are referred to as the “existing charging provisions”.

##### PART II

#### FUNCTIONS WHERE RESPONSIBILITY FOR PROVIDING SUFFICIENT SCHOOL PLACES IS SHARED

###### *Introductory*

- 2 If an order under section 12(1)(a) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

###### *Responsibility for providing sufficient school places*

- 3 (1) If the schools providing relevant education which are available for the area are not sufficient, the funding authority shall, for the purpose of securing the availability of sufficient schools providing such education for the area, exercise their powers to make proposals for the establishment, alteration and discontinuance of schools.
- (2) In performing that duty, the funding authority shall have regard to the need for securing that special educational provision is made for pupils who have special educational needs.

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- (3) The schools available for any area shall not be treated as sufficient for the purposes of this paragraph unless they are sufficient for the purposes of section 8(1) of the Education Act 1944 (duty of local education authority to secure availability of schools).
- (4) Nothing in this paragraph requires a funding authority to take any action where to do so would not be an effective use of their resources.
- (5) In this paragraph, “powers to make proposals for the establishment, alteration and discontinuance of schools” means all or any of the powers to publish proposals under sections 48, 97 or 105 of this Act or give notice of proposals under section 183 of this Act.

### PART III

#### FUNCTIONS WHERE RESPONSIBILITY FOR PROVIDING SUFFICIENT SCHOOL PLACES IS TRANSFERRED

##### *Introductory*

- 4 If an order under section 12(1)(b) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

##### *Responsibility for providing sufficient school places*

- 5 (1) The duty under section 8(1) of the Education Act 1944 shall be discharged by the funding authority instead of the local education authority.
- (2) In discharging that duty the funding authority shall, in particular, have regard to the matters referred to in section 8(2)(c) of that Act (provision for pupils who have special educational needs).
- (3) The funding authority may provide board and lodging otherwise than at school for pupils at maintained or grant-maintained schools; and, where the authority do so, the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the authority not exceeding the cost to the authority of the provision.
- (4) Where the governing body of a grant-maintained school provide board and lodging at the school for pupils there, the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the governing body not exceeding the cost to the governing body of the provision.
- 6 (1) The local education authority may continue to secure the provision of relevant education falling within section 8(1) of that Act and (subject to paragraph 7 below) to secure the provision of schools for that purpose.
- (2) In exercising those powers the local education authority shall, in particular, have regard to the matters referred to in section 8(2) of that Act (which include separation of primary and secondary education, and boarding accommodation for those for whom boarding is desirable).
- (3) Where the local education authority—

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- (a) provide board and lodging at a maintained school for pupils there, or
- (b) provide board and lodging otherwise than at school for pupils at maintained or grant-maintained schools,

the parents of the pupils concerned shall, subject to the following provisions of this Schedule, pay charges to the authority not exceeding the cost to the authority of the provision.

*Powers to establish, maintain and alter schools*

- 7 (1) The local education authority may not exercise the power under section 9 of that Act to establish any school, or to begin to maintain as a county school any school which is not such a school, (in both cases referred to in this paragraph as “the school in question”) unless—
- (a) under section 14 of the Education Act 1944 or section 12 of the Education Act 1980 their duty to maintain one or more other schools ceases, and
  - (b) the school in question is intended to provide education for pupils in the area which was served by the other school or (as the case may be) the other schools.
- (2) This paragraph does not apply—
- (a) to special schools,
  - (b) to nursery schools,
  - (c) where relevant education is only primary education, if the school in question is or will be a secondary school which also provides primary education, or
  - (d) where relevant education is only secondary education, if the school in question is or will be a primary school which also provides secondary education.
- 8 (1) No proposals in respect of any school (referred to in this paragraph as “the school in question”) published under section 13(1)(a) of the Education Act 1980 (proposal that existing or proposed school should be maintained as a voluntary school) may be implemented unless—
- (a) under section 14 of the Education Act 1944 or section 12 of the Education Act 1980 the duty of the local education authority to maintain one or more other schools ceases, and
  - (b) the school in question is intended to provide education for pupils in the area which was served by the other school or (as the case may be) the other schools.
- (2) This paragraph does not apply—
- (a) where relevant education is only primary education, if the school in question is or will be a secondary school which also provides primary education, or
  - (b) where relevant education is only secondary education, if the school in question is or will be a primary school which also provides secondary education.

*Charges for board and lodging or independent education*

- 9 (1) Sub-paragraph (3) below applies where—
- (a) any pupil of compulsory school age ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at

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- school) or with education at a school which is not a maintained or grant-maintained school,
- (b) the funding authority are of the opinion that it is not practicable for the pupil to obtain admission to any maintained or grant-maintained school which is a reasonable distance from his home and provides efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, and
  - (c) the authority are of the opinion that it is appropriate for the pupil to be provided with the particular board and lodging or, as the case may be, education.
- (2) Sub-paragraph (3) below also applies where—
- (a) any pupil ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at school) or with education at a school which is not a maintained or grant-maintained school, and
  - (b) the funding authority are of the opinion that—
    - (i) the conditions in sub-paragraph (1) above have been, but are no longer, met by reason only of the pupil having ceased to be of compulsory school age or sub-paragraph (1)(b) above having ceased to apply, and
    - (ii) it would not be desirable for the pupil to cease to be provided with the particular board and lodging or, as the case may be, education.
- (3) Where this sub-paragraph applies—
- (a) if board and lodging is provided by the funding authority, no charge shall be payable to the authority under this Schedule in respect of the board and lodging,
  - (b) if board and lodging is provided at a maintained or grant-maintained school or by a local education authority, the funding authority shall pay the whole of the charges payable to any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging, and
  - (c) in any other case the funding authority shall pay the whole of the fees payable in respect of the board and lodging or, as the case may be, the education.
- (4) This paragraph does not apply in the case of a pupil for whom a statement is maintained under section 168 of this Act.
- 10 (1) This paragraph applies where any pupil ordinarily resident in the area is being provided with board and lodging (at a boarding school or otherwise than at school) or with education at a school which is not a maintained or grant-maintained school.
- (2) If board and lodging is provided at a school maintained by the responsible education authority and the authority are of the opinion that it is desirable for the pupil to be provided with board and lodging, or board and lodging otherwise than at school is provided by the authority, (but in any of those cases paragraph 9(3) above does not apply) then—
- (a) the authority may remit the whole or any part of the charges payable to them under this Schedule in respect of the board and lodging, and
  - (b) if they are of the opinion that, in order to avoid financial hardship to the pupil's parent, the parent should not pay the whole or any part of those charges, the authority shall remit the whole or, as the case may be, that part of those charges.

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- (3) If board and lodging otherwise than at school is provided by the funding authority or board and lodging is provided at a grant-maintained school or a school maintained by another local education authority (but in any of those cases paragraph 9(3) above does not apply)—
- (a) the responsible education authority may pay the charges payable to the funding authority, or any local education authority or governing body, under this Schedule or the existing charging provisions in respect of the board and lodging, and
  - (b) if they are of the opinion that it is desirable for the pupil to be provided with board and lodging, they shall pay so much (if any) of those charges as in their opinion is required to be paid by them in order to avoid financial hardship to the parent.
- (4) In any other case to which this paragraph applies (but paragraph 9(3) above does not apply)—
- (a) the local education authority may pay the whole of the fees payable in respect of the board and lodging or, as the case may be, the education, and
  - (b) if they are of the opinion that it is desirable for the pupil to be provided with board and lodging and appropriate for him to be provided with the particular board and lodging, they shall pay so much (if any) of the fees payable in respect of board and lodging as in their opinion is required to be paid by them in order to avoid financial hardship to the parent, and
  - (c) if they are of the opinion that it is desirable for the pupil to be provided with education otherwise than in a maintained or grant-maintained school and appropriate for him to be provided with the particular education, they shall pay so much (if any) of the fees payable in respect of the education as in their opinion is required to be paid by them in order to avoid financial hardship to the parent.
- (5) In this paragraph the “responsible education authority”, in relation to a pupil ordinarily resident in any area, means the local education authority for the area.
- (6) This paragraph does not apply in the case of a pupil for whom a statement is maintained under section 168 of this Act.
- 11 (1) Where a pupil in the area for whom a statement is maintained under section 168 of this Act is attending a maintained or grant-maintained school, this paragraph applies if he is provided with board and lodging at the school or otherwise than at school and either—
- (a) the school is named in the statement and—
    - (i) the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the particular board and lodging are also provided, or
    - (ii) the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless board and lodging are also provided and that it is appropriate for him to be provided with the particular board and lodging, or
  - (b) the school is not named in the statement but the responsible education authority are satisfied that the necessary special educational provision cannot be provided for him unless board and lodging are also provided and that it is appropriate for him to be provided with the particular board and lodging.

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- (2) Where the board and lodging is provided by the responsible education authority, no charge shall be payable to the authority under this Schedule in respect of the board and lodging.
  - (3) Where the board and lodging is provided by the funding authority or another local education authority or at a grant-maintained school or a school maintained by another local education authority, the responsible education authority shall pay the charges payable to the funding authority or any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging.
  - (4) In any other case to which this paragraph applies, the responsible education authority shall pay to the person providing the board and lodging the whole of the fees in respect of the board and lodging.
  - (5) In this paragraph the “responsible education authority”, in relation to a pupil, means the local education authority responsible for the pupil for the purposes of Part III of this Act.
- 12 (1) Where a pupil in the area for whom a statement is maintained under section 168 of this Act is attending a maintained or grant-maintained school and is provided with board and lodging at the school or otherwise than at school, then—
- (a) where the board and lodging is provided by the responsible education authority, the authority may remit the whole or any part of the charges payable to them under this Schedule in respect of the board and lodging,
  - (b) where the board and lodging is provided by the funding authority or another local education authority or at a grant-maintained school or a school maintained by another local education authority, the responsible education authority may pay the whole or any part of the charges payable to the funding authority or any local education authority or governing body under this Schedule or the existing charging provisions in respect of the board and lodging, and
  - (c) in any other case, the responsible education authority may pay to the person providing the board and lodging the whole or any part of the fees in respect of the board and lodging.
- (2) In this paragraph the “responsible education authority”, in relation to a pupil, means the local education authority responsible for the pupil for the purposes of Part III of this Act.

#### *General*

- 13 (1) The following provisions shall not apply—
- (a) sections 50 and 52 of the Education Act 1944 (power of LEA to provide board and lodging otherwise than at school and recovery of charges from parents),
  - (b) section 6(2)(a)(ii) of the Education (Miscellaneous Provisions) Act 1953 (payment by LEA of fees and boarding charges where pupil attends non-maintained school because of shortage of places in maintained and grant-maintained schools), and
  - (c) section 111 of the Education Reform Act 1988 (charges and remission of charges for board and lodging in maintained and grant-maintained schools).

- (2) Any charges payable to the local education authority, the funding authority or the governing body of a grant-maintained school under this Schedule may be recovered summarily as a civil debt.
- 14 (1) Section 193 of this Act shall have effect as if for subsection (5) there were substituted—
- “(5) If—
- (a) within the period mentioned in subsection (3) above, the parent applies to the funding authority, or the local education authority by whom the notice was served, for education to be provided for the child at a school which is not a school maintained by a local education authority or a grant-maintained school and, in the case of an application to the funding authority, notifies the local education authority by whom the notice was served of the application,
  - (b) the child is offered a place at the school, and
  - (c) either the funding authority are required under paragraph 9 of Schedule 2 to this Act to pay the fees payable in respect of the education provided at the school or the local education authority agree to pay the whole of those fees under paragraph 10 of Schedule 2 to this Act,
- that school shall be named in the order.”
- (2) Section 195 of this Act shall have effect as if for subsection (3) there were substituted—
- “(3) If at any time—
- (a) the parent applies to the funding authority or the local education authority by whom the notice was served for education to be provided for the child at a school which is not a school maintained by a local education authority or a grant-maintained school and is different from the school named in the order,
  - (b) the child is offered a place at the school,
  - (c) either the funding authority are required under paragraph 9 of Schedule 2 to this Act to pay the fees payable in respect of the education provided at the school or the local education authority agree to pay the whole of those fees under paragraph 10 of Schedule 2 to this Act, and
  - (d) the parent requests the local education authority to amend the order by substituting that school for the one currently named,
- the authority shall comply with the request.”.

#### **PART IV**

##### FUNCTIONS WHERE RESPONSIBILITY EITHER SHARED OR TRANSFERRED

###### *Introductory*

- 15 If an order under section 12(1)(a) or (b) of this Act applies to the area of a local education authority, this Part of this Schedule has effect in respect of that area in relation to relevant education.

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*Responsibility for providing sufficient school places*

- 16 In relation to any power under section 48 of this Act to publish proposals for the establishment of a grant-maintained school—
- (a) references to establishing a school for the purpose of providing primary education include establishing a primary school which also provides secondary education, and
  - (b) references to establishing a school for the purpose of providing secondary education include establishing a secondary school which also provides primary education.
- 17 (1) Where relevant education is only primary education—
- (a) no proposals may be published under section 97 of this Act in respect of any grant-maintained school which is a secondary school or if the implementation of the proposals would cause the school to become a secondary school,
  - (b) no proposals may be published under section 105 of this Act in respect of any grant-maintained secondary school, and
  - (c) no direction may be given under section 151(2) of this Act to the governing body of any grant-maintained secondary school.
- (2) Where relevant education is only secondary education—
- (a) no proposals may be published under section 97 of this Act in respect of any grant-maintained school which is a primary school or if the implementation of the proposals would cause the school to become a primary school,
  - (b) no proposals may be published under section 105 of this Act in respect of any grant-maintained primary school, and
  - (c) no direction may be given under section 151(2) of this Act to the governing body of any grant-maintained primary school.
- 18 The funding authority shall not by virtue of paragraph 3 or 5 of this Schedule be under any duty in respect of junior pupils who have not attained the age of five years.

*Boarding schools*

- 19 The powers of the funding authority to publish proposals under sections 48 and 97 of this Act or to give notice of proposals under section 183 of this Act may, in particular, be so exercised as to secure the provision of boarding accommodation at boarding schools.

*Other modifications of Part II*

- 20 Section 96 of this Act shall have effect as if the funding authority were among the persons who may submit objections under subsection (6) of that section to proposals under that section.
- 21 Section 104 of this Act shall have effect as if—
- (a) the reference in subsection (3) to the local education authority included the funding authority, and
  - (b) the funding authority were among the persons who may submit objections under subsection (7) of that section to proposals under that section.
- 22 Section 109 of this Act shall have effect as if—

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- (a) subsection (1)(a) were omitted, and
- (b) the funding authority were among the persons required to be consulted under subsection (5)(b).

23 Section 149(4) of this Act shall have effect as if the reference to the Secretary of State were to the funding authority.