



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### PART II

#### NEW FRAMEWORK FOR MAINTAINED SCHOOLS

### CHAPTER II

#### ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS

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

C1 Pt. II Chapter II modified (1.9.1999) by [S.I. 1999/704](#), regs. 21, 22, [Sch.](#)

#### *Mainstream schools maintained by LEAs*

## 28 **Proposals for establishment or alteration of community, foundation or voluntary school.**

- (1) Where a local education authority propose—
  - (a) to establish a new community or foundation school, or
  - (b) to make any prescribed alteration to a community school, or
  - (c) to make any prescribed alteration to a foundation school consisting of an enlargement of the premises of the school,the authority shall publish their proposals under this section.
- (2) Where—
  - (a) any persons (referred to in this Part as “promoters”) propose to establish a new foundation or voluntary school, or

**Status:** Point in time view as at 19/12/2002.

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- (b) the governing body of a foundation or voluntary school propose to make any prescribed alteration to the school,

those persons or (as the case may be) the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,

as may be prescribed.
- (4) Proposals under this section may if the relevant body or promoters think fit—
  - (a) specify an age below 10 years and six months and an age above 12 years, and
  - (b) provide that the school to which the proposals relate is to be a school providing full-time education suitable to the requirements of pupils whose ages are between the ages so specified.
- (5) Before publishing any proposals under this section, the relevant body or promoters shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body or promoters shall have regard to any guidance given from time to time by the Secretary of State.
- (6) Where any proposals published under this section relate to a school or proposed school in England, the relevant body or promoters shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.
- (7) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body or promoters shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

to the Secretary of State.
- (8) Schedule 6 has effect (for both England and Wales) in relation to—
  - (a) the procedure for dealing with proposals under this section and their implementation; and
  - (b) the provision of premises or other assistance in connection with their implementation.
- (9) Where any proposals published under this section—
  - (a) are for the transfer of a school to a site in a different area, or
  - (b) relate to a school which is, or (in the case of a new school) is proposed to be, situated in an area other than that of the local education authority who maintain, or (as the case may be) who it is proposed should maintain, the school,

the provisions of subsection (6) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (10) In this section “the relevant body or promoters” means the local education authority, governing body or promoters mentioned in subsection (1) or (2) (as the case may be).

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(11) In this Part—

- (a) “alteration”, in the context of a prescribed alteration to a maintained school, means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change—
  - (i) in the religious character of the school, or
  - (ii) whereby the school would acquire or lose a religious character; and
- (b) “area” (without more) means a local education authority area.

(12) Any regulations made for the purposes of subsection (1)(b) or (2)(b) may be framed by reference to the opinion of the local education authority.

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

- C2** S. 28 amended (1.4.1999) by [S.I. 1999/125](#), [art. 2\(3\)](#).
- C3** S. 28 extended (10.3.1999) by [S.I. 1999/362](#), [reg. 6\(2\)\(3\)](#).
- C4** S. 28 applied (with modifications) (1.9.1999) by [S.I. 1999/2259](#), [regs. 5\(1\), 10](#), [Sch. 1](#).  
S. 28 applied (with modifications) (1.9.1999) by [S.I. 1999/2259](#), [regs. 5\(2\), 10](#), [Sch. 2](#).  
S. 28 applied (with modifications) (1.9.1999) (*temp.*) by [S.I. 1999/2633](#), [regs. 4, 5\(1\)](#), [Sch. 1](#).  
S. 28 modified (1.9.1999) by [S.I. 1999/2633](#), [reg. 5\(2\)](#), [Sch. 2](#).
- C5** S. 28 modified (1.9.1999) by [S.I. 1999/2633](#), [reg. 5\(2\)](#), [Sch. 2](#).
- C6** S. 28; Power to modify conferred (prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 74\(2\)\(a\)](#) 216 (with [ss. 210\(8\), 214\(4\)](#))
- C7** S. 28(3)(7)(8)(10)(11) applied (with modifications) (W.) (1.9.2001) by [S.I. 2001/2678](#), [reg. 7](#), [Sch. 1 Pt. 1](#) Table 3 (as amended (W.) (1.2.2006) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2006 \(S.I. 2006/173\)](#), [regs. 1\(1\), 12](#))
- C8** S. 28(3) applied (with modifications) (1.9.1999) by [S.I. 1999/2213](#), [reg. 15](#), [Sch. 4](#).  
s. 28(3): s. 28(3)(except para. (b)) applied with modifications (1.9.1999) by [S.I. 1999/1671](#), [reg. 10](#), [Sch. 5](#)
- C9** S. 28(3)(5)(6)(8)(10)(11) applied (with modifications) (E.) (1.9.2000) by [S.I. 2000/2195](#), [art. 4\(1\)](#), [Sch. 1](#)
- C10** S. 28(5) applied (with modifications) (W.) (1.9.2001) by [S.I. 2001/2678](#), [reg. 7](#), [Sch. 1 Pt. 1](#) Table 1
- C11** S. 28(5) applied (with modifications) by [S.I. 1999/2213](#), [reg. 15](#), [Sch. 4](#)  
s. 28(5) applied with modifications (1.9.1999) by [S.I. 1999/1671](#), [reg. 10](#), [Sch. 5](#)
- C12** S. 28(6) applied (with modifications) by [S.I. 1999/2213](#), [reg. 15](#), [Sch. 4](#).  
S. 28(6) modified (1.9.1999) by [S.I. 1999/2213](#), [reg. 15\(2\)\(4\)](#), [Sch. 5 Pt. 1 para. 1](#).  
S. 28(6) modified (1.9.1999) by [S.I. 1999/2213](#), [reg. 15\(2\)\(4\)](#), [Sch. 5 Pt. 1 para. 2\(a\)](#).  
S. 28(6) modified (1.9.1999) by [S.I. 1999/704](#), [regs. 21, 22](#), [Sch.](#)
- C13** S. 28(7) applied with modifications (1.9.1999) by [S.I. 1999/1671](#), [reg. 10](#), [Sch. 5](#)
- C14** S. 28(10) applied (with modifications) (1.9.1999) by [S.I. 1999/2213](#), [reg. 15](#), [Sch. 4](#).  
s. 28(10) applied with modifications (1.9.1999) by [S.I. 1999/1671](#), [reg. 10](#), [Sch. 5](#)

**Commencement Information**

- I1** S. 28 wholly in force at 1.9.1999; s. 28 not in force at Royal Assent see [s. 145\(3\)](#); s. 28(9) in force at 1.2.1999 by [S.I. 1998/3198](#), [art. 2\(2\)](#), [Sch.](#); s. 28(5)(10) in force at 1.4.1999 by [S.I. 1999/1016](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-6](#), [Sch. 4](#)); S. 28 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

**29 Proposals for discontinuance of community, foundation, voluntary or maintained nursery school.**

- (1) Where a local education authority propose to discontinue—

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- (a) a community, foundation or voluntary school, or
  - (b) a maintained nursery school,

the authority shall publish their proposals under this section.
- (2) Where the governing body of a foundation or voluntary school propose to discontinue the school, the governing body shall publish their proposals under this section.
- (3) Proposals under this section shall—
  - (a) contain such information, and
  - (b) be published in such manner,

as may be prescribed.
- (4) Before publishing any proposals under this section, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Where any proposals published under this section relate to a school in England, the relevant body shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

to the school organisation committee for the area of the local education authority who maintain the school.
- (6) Where any proposals published under this section relate to a school in Wales, the relevant body shall send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed,

to the Secretary of State.
- (7) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.
- (8) Where any proposals published under this section relate to a school which is situated in an area other than that of the local education authority who maintain it, the provisions of subsection (5) and Schedule 6 shall have effect in relation to the proposals with such modifications as may be prescribed.
- (9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).
- (10) In this Part any reference to a local education authority—
  - (a) discontinuing a school, or
  - (b) implementing proposals to discontinue a school (whether published by the authority or the governing body),

is to the authority ceasing to maintain the school.

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

**C15** S. 29(5) modified (1.9.1999) by [S.I. 1999/2213](#), reg. 15(2)(4), [Sch. 5 Pt. I para. 2\(b\)](#).

**C16** S. 29(5) modified (1.9.1999) by [S.I. 1999/704](#), regs. 21, 22, [Sch.](#)

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### Commencement Information

- I2** S. 29 wholly in force at 1.9.1999; s. 29 not in force at Royal Assent see s. 145(3); s. 29(8) in force at 1.2.1999 by [S.I. 1998/3198, art. 2\(2\), Sch.](#); s. 29(4)(9) in force at 1.4.1999 by [S.I. 1999/1016, art. 2\(1\), Sch. 1](#) (with [arts. 3-6, Sch. 4](#)); s. 29 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323, art. 2\(1\), Sch. 1](#) (with [arts. 3-5, Schs. 5-7](#)).

## 30 Notice by governing body to discontinue foundation or voluntary school.

- (1) Subject to the following provisions of this section, the governing body of a foundation or voluntary school may discontinue the school by serving on the Secretary of State and the local education authority at least two years' notice of their intention to do so.
- (2) If expenditure has been incurred on the school premises (otherwise than in connection with repairs)—
  - (a) by the Secretary of State,
  - (b) by the Funding Agency for Schools,
  - (c) by any local education authority, or
  - (d) by an authority which was a local education authority within the meaning of any enactment repealed by the <sup>MI</sup>Education Act 1944 or an earlier Act,no such notice may be served without the consent of the Secretary of State.
- (3) If discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall, before serving a notice under this section, consult [<sup>F</sup>the Learning and Skills Council for England (if the school is in England) or the National Council for Education and Training for Wales (if the school is in Wales)].
- (4) If, while a notice under subsection (1) is in force in respect of a foundation or voluntary school, the governing body inform the local education authority that they are unable or unwilling to carry on the school until the notice expires, the authority—
  - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and
  - (b) shall be entitled to use the school premises free of charge for that purpose.
- (5) While the school is being so conducted—
  - (a) the authority shall keep the school premises in good repair, and
  - (b) any interest in the premises which is held for the purposes of the school shall be deemed, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, to be vested in the authority.
- (6) Despite the provisions of subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if they had continued to carry on the school during the unexpired period of the notice.
- (7) A notice served under subsection (1) may not be withdrawn without the consent of the local education authority.
- (8) If a foundation or voluntary school is discontinued under this section, the duty of the local education authority to maintain the school as a foundation or voluntary school shall cease.
- (9) Nothing in section 29 or 33 applies to any such discontinuance of a foundation or voluntary school.

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(10) Where—

- (a) land occupied by a foundation or voluntary school is held by any trustees for the purposes of the school, and
- (b) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site,

then if the trustees (being entitled to do so) give any notice to the governing body which purports to terminate the school's occupation of the land, any such notice shall not be effective to terminate its occupation of the land unless the requirements of subsection (11) are complied with in relation to the notice (without prejudice to any other statutory or other requirements falling to be so complied with).

(11) The requirements of this subsection are—

- (a) that the period of notice must—
  - (i) be reasonable having regard to the length of time that would be required to discontinue the school (if the governing body chose to do so), and
  - (ii) in any event must not be less than two years; and
- (b) that a copy of the notice must be given to the Secretary of State and the local education authority at the time when the notice is given to the governing body.

(12) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(b) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them.

(13) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(b) (including a question as to whether subsection (12) applies in any particular circumstances), it shall be determined by the Secretary of State.

#### **Textual Amendments**

**F1** Words in s. 30(3) substituted (28.7.2000 for specified purposes and otherwise 1.4.2001) by [2000 c. 21, s. 149, Sch. 9 para. 83](#); [S.I. 2001/654, art. 2, Sch. Pt. II](#) (with art. 3)

#### **Marginal Citations**

**M1** [1944 c. 31](#).

### *Special schools maintained by LEAs*

## **31 Proposals for establishment, alteration or discontinuance of community or foundation special school.**

(1) Where a local education authority intend—

- (a) to establish a new community or foundation special school, or
- (b) to make any prescribed alteration to such a school, or
- (c) to discontinue such a school,

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the authority shall publish their proposals under this section.

(2) Where the governing body of a foundation special school propose—

- (a) to make any prescribed alteration to the school, or
- (b) to discontinue the school,

the governing body shall publish their proposals under this section.

(3) Proposals under this section shall—

- (a) contain such information, and
- (b) be published in such manner,

as may be prescribed.

(4) Before publishing any proposals under this section, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.

(5) Where any proposals published under this section relate to a school or proposed school in England, the relevant body shall send—

- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.

(6) Where any proposals published under this section relate to a school or proposed school in Wales, the relevant body shall send—

- (a) a copy of the proposals, and
  - (b) such information in connection with those proposals as may be prescribed,
- to the Secretary of State.

(7) The relevant body shall also send a copy of any proposals to which subsection (5) or (6) applies to such other bodies or persons as may be prescribed.

(8) Schedule 6 has effect (for both England and Wales) in relation to the procedure for dealing with proposals under this section and their implementation.

(9) In this section “the relevant body” means the local education authority or governing body mentioned in subsection (1) or (2) (as the case may be).

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

**C17** S. 31 extended (10.3.1999) by [S.I. 1999/362](#), [reg. 6\(4\)](#).

**C18** S. 31 modified (prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 74\(1\)\(a\)](#), 216 (with [ss. 210\(8\)](#), [214\(4\)](#))

**C19** [S. 31](#): Power to modify conferred (prosp.) by [Education Act 2002 \(c. 32\)](#), [ss. 74\(2\)\(a\)](#), 216 (with [ss. 210\(8\)](#), [214\(4\)](#))

**C20** S. 31(3) except paragraph (b) applied (with modifications) (1.9.1999) by [S.I. 1999/1780](#), [reg. 11](#), [Sch.4](#).

S. 31(3) applied (with modifications) (1.9.1999) by [S.I. 1999/2212](#), [reg. 16](#), [Sch.4](#).

**C21** S. 31(4) applied (with modifications) (1.9.1999) by [S.I. 1999/1780](#), [reg. 11](#), [Sch.4](#).

S. 31(4) applied (with modifications) (1.9.1999) by [S.I. 1999/2212](#), [reg. 16](#), [Sch.4](#).

**C22** S. 31(5) applied (with modifications) (1.9.1999) by [S.I. 1999/2212](#), [reg. 16](#), [Sch.4](#).

S. 31(5) modified (1.9.1999) by [S.I. 1999/704](#), [regs. 21](#), [22](#), [Sch.](#)



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- C23** S. 31(6) applied (with modifications) (1.9.1999) by [S.I. 1999/1780, reg. 11, Sch.4.](#)  
**C24** S. 31(7) applied (with modifications) (1.9.1999) by [S.I. 1999/1780, reg. 11, Sch.4.](#)  
 S. 31(7) applied (with modifications) (1.9.1999) by [S.I. 1999/2212, reg. 16, Sch.4.](#)  
**C25** S. 31(9) applied (with modifications) (1.9.1999) by [S.I. 1999/1780, reg. 11, Sch.4.](#)  
 S. 31(9) applied (with modifications) (1.9.1999) by [S.I. 1999/2212, reg. 16, Sch.4.](#)

#### **Commencement Information**

- I3** S. 31 wholly in force at 1.9.1999; s. 31 not in force at Royal Assent see s. 145(3); s. 31(4)(9) in force at 1.4.1999 by [S.I. 1999/1016, art. 2\(1\), Sch. 1](#) (with [arts. 3-6, Sch. 4](#)); s. 31 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323, art. 2\(1\), Sch. 1](#) (with [arts. 3-5, Schs. 5-7](#)).

### **32 Direction requiring discontinuance of community or foundation special school.**

- (1) The Secretary of State may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a community or foundation special school, give a direction to the local education authority by whom the school is maintained requiring the school to be discontinued on a date specified in the direction.
- (2) A direction under subsection (1) may require the local education authority to notify any persons or class of persons specified in the direction.
- (3) Before giving a direction under subsection (1), the Secretary of State shall consult—
  - (a) the local education authority;
  - (b) any other local education authority who would in his opinion be affected by the discontinuance of the school;
  - (c) in the case of a foundation special school which has a foundation, the person who appoints the foundation governors; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (4) On giving a direction under subsection (1) the Secretary of State shall give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where a local education authority are given a direction under subsection (1), they shall discontinue the school in question on the date specified in the direction; and nothing in section 31 or 33 applies to any such discontinuance of the school under this section.

*Further provisions relating to establishment, alteration or discontinuance of schools*

### **33 Further provisions relating to establishment, alteration or discontinuance of schools.**

- (1) Except in pursuance of proposals falling to be implemented under [<sup>F2</sup>any enactment]—
  - (a) no maintained school shall be established or discontinued;
  - (b) no prescribed alteration shall be made to any such school; and
  - (c) no maintained nursery school shall be discontinued.
- (2) No alteration falling within section 28(11)(a)(i) or (ii) shall be made to any maintained school.
- (3) Subsection (1) has effect subject to sections 19(4), 30(9) and 32(5).
- (4) Regulations may, in relation to proposals published under section 28, 29 or 31, require any of the following, namely—



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- (a) the body or promoters who published the proposals,
- (b) the school organisation committee, and
- (c) the adjudicator,

to provide such information relating to the proposals to such persons, and at such times, as may be prescribed.

#### Textual Amendments

- F2** Words in s. 33(1) substituted (19.12.2002 for W. otherwise prosp.) by [Education Act 2002 \(c. 32\)](#), ss. 215(1), 216, [Sch. 21 para. 98\(2\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2002/3185, [art. 4](#), Sch. Pt. 1

#### Commencement Information

- I4** S. 33 wholly in force at 1.9.1999; s. 33 not in force at Royal Assent see s. 145(3); s. 33(4) in force at 1.2.1999 by [S.I. 1998/3198](#), [art. 2\(2\)](#), [Sch.](#); s. 33 in force at 1.9.1999 in so far as not already in force by [S.I. 1999/2323](#), [art. 2\(1\)](#), [Sch. 1](#) (with [arts. 3-5](#), [Schs. 5-7](#)).

### *Rationalisation of school places*

#### **34 Rationalisation of school places.**

Schedule 7 (which provides for the Secretary of State to give directions to local education authorities and governing bodies to bring forward proposals for the rationalisation of school places, and for such proposals to be made by him) shall have effect.

### *Change of category of school*

#### **35 School changing from one category to another.**

- (1) Schedule 8 makes provision for and in connection with—
- (a) enabling a maintained school within one of the categories set out in section 20(1) to become a school within another of those categories, and
  - (b) in certain circumstances, requiring proposals to be published for a voluntary aided school to become a school within another of those categories;
- and a maintained school may not so change its category otherwise than in accordance with that Schedule.
- (2) Except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of paragraph 3 of Schedule 8, that Schedule does not apply at any time before the end of such period as may be prescribed.

**Status:**

Point in time view as at 19/12/2002.

**Changes to legislation:**

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