

*These notes refer to the Education Act 2002 (c.32)
which received Royal Assent on 24 July 2002*

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 3 – Maintained Schools

Chapter 1 – Government of maintained schools

Sections 19 to 40

Section 19 and Schedule 1: Governing Bodies

75. The section provides for each maintained school to have a governing body which is a body corporate, the constitution and membership of which will be established in accordance with regulations. Currently the SSFA prescribes the membership of governing bodies for different categories of schools.
76. In relation to England, regulations will establish the principles by which schools will be able to set the membership of their governing bodies from certain stakeholder categories and will set proportions to be drawn from them rather than absolute numbers as at present. In voluntary aided schools, foundation governors will be in the majority.
77. The regulations will also establish a single staff governor category to replace separate teacher and non-teacher staff categories and will also establish that within that category one place should be reserved for a teacher, and where at least 3 staff places are available, one place should be reserved for a member of the school's support staff.
78. In relation to Wales the NAW will make the regulations and will consult interested bodies before establishing the requirements for membership and procedures of governing bodies.
79. Regulations under this section will also make provision for other matters relating to the constitution and procedures of governing bodies, including how governors are to be elected or appointed, eligibility, resignation, removal and how governing body meetings should be conducted.
80. This section and the new Schedule 1 replace section 36 of, and Schedules 9, 10 and 11 to, the SSFA. Paragraph 1 of Schedule 10 to the SSFA, which provided for the continuance of governing bodies on the introduction of the new school categories, does not require re-enactment. Schedule 1 re-enacts the rest of that Schedule, with changes that reflect the transfer of functions to the NAW and also the new powers conferred on governing bodies under section 27 to provide community facilities.

Section 20: Instruments of government

81. This section requires every maintained school to have an instrument of government. It also provides the power to establish in regulations the procedures for making, reviewing and varying the instrument of government and its required content.

82. The section replaces section 37 and Schedule 12 of the SSFA. Requirements as to the contents and making of instruments of government, and their review and variation, will be set out in regulations under this section rather than in Schedule 12 to the SSFA. It is intended that the procedures for making, reviewing and varying instruments of government will be similar to those in Schedule 12, with no change in the requirement for consultation with interested parties.

Section 21: General responsibility for conduct of school

83. This section re-enacts section 38 of the SSFA. It sets out the governing body's responsibility for the conduct of the school, with an emphasis on promoting high standards. It also provides a power to make regulations on other matters relating to the conduct of the school. In particular, the section re-enacts the existing power to make regulations defining the respective roles and responsibilities of the governing body and the head teacher, but extends it to cover the role and responsibilities of the LEA.

Section 22: Training and support of governors

84. This section re-enacts without amendment paragraph 7 of Schedule 11 of the SSFA. It provides that the LEA must provide every governor, free of charge, with such information and training as they consider appropriate.

Section 23: Clerk to the governing body

85. This section re-enacts without amendment paragraph 8 of Schedule 11 of the SSFA. It provides for regulations to make provisions in relation to the clerk of the governing body. Such regulations may include a requirement to appoint a clerk to the governing body or to its committees, the dismissal of the clerk and where the clerk fails to attend, the appointment of a member of the governing body or one of its committees to act as clerk for the purposes of that meeting.

Sections 24 and 25: Federations of schools and supplementary provisions

86. **Section 24** gives effect to the proposal that two or more schools may federate under a single governing body and that the decision to federate should rest with the governing bodies concerned once they have complied with certain conditions and procedures, including consultation with interested parties. Regulations made by the Secretary of State or the NAW may, for example, establish a maximum number of schools that should be able to federate or restrict federation to schools within a certain category or within an individual LEA. Schools within a federation will continue to be treated as individual schools (i.e. that in exercising their duties governing bodies must do so for each school within a federation individually) except in prescribed circumstances.
87. The section also establishes a power to provide in regulations requirements relating to federations, federated schools and the formation or dissolution of federations. For example, it is intended to provide for a procedure by which a school within a federation will leave a federation; this may include a requirement to involve the parents of registered pupils at the school.
88. **Section 25** provides that regulations will be able to modify those parts of the SSFA that relate to schools causing concern and financial delegation as to how they should apply to federations. Similarly it provides that the regulations may modify any enactment that relates to different categories of schools as to how those individual schools in, or the governing body of, a federation should be treated.

Section 26: Collaboration between schools

89. This section provides for regulations to be made that would allow governing bodies to collaborate by arranging for joint discharge of functions either through whole governing bodies or through joint committees. The section permits those governing bodies that

wish to collaborate but do not wish to federate under a single governing body, as provided for in section 24, to have the opportunity to form joint committees or hold joint meetings.

Sections 27 and 28: power of governing body to provide community facilities

90. These sections enable the governing bodies of all maintained schools to provide any facilities or services which will further any charitable purpose for the benefit of their pupils, families of pupils and the wider community. This power is in addition to the governing body's general responsibility to conduct the school with a view to promoting high standards of educational achievement at the school.
91. These sections give governing bodies flexibility by, for example, allowing them to incur expenditure, enter into agreements and charge for any services or facilities.
92. **Schedule 1** provides that the general powers of the governing body relate to the provision of community facilities as well as the governing body's core duty of provision of education.
93. The sections place certain limits on governing bodies should they decide to exercise their power. Section 28 provides that governing bodies' power to provide community facilities is subject to any limits or restrictions contained in the school's instrument of government and the local authority's financial scheme under section 48 of SSFA. The sections ensure governors cannot exercise the power to provide community facilities if it interferes with the duties they are required to carry out under Education Acts and contain a power to make regulations to prohibit certain specific types of service.
94. The sections require the governing body to consult the LEA, school staff, parents, pupils and any other people the governing body thinks appropriate before exercising this power, to have regard to any guidance issued by the Secretary of State or the NAW and to have regard to any advice offered by the LEA.

Section 29: Additional functions of governing body

95. The section re-enacts section 39 of the SSFA. It requires governing bodies to establish a procedure to deal with complaints not covered by existing statutory requirements in relation to delivery of the National Curriculum, provision of collective worship and religious education (RE), SEN assessments, admissions and exclusions. In producing their complaints procedures, governing bodies will be required to have regard to any guidance given by the Secretary of State or the NAW. It is intended that the guidance will set out the general principles. The existing regulation-making power in section 39(1) has never been exercised. Unlike section 39(1), section 29(1) will apply to maintained nursery schools.
96. The section also makes provision for governing bodies to require pupils to attend any place outside the school for curriculum purposes. The section also extends the requirement for the governing body and head teacher of community, community special or voluntary controlled schools to comply with LEA directions in relation to health and safety on the school premises or elsewhere when taking part in school activities to governing bodies of maintained nursery schools.

Section 30: Governors' reports and other information

97. This section replaces sections 42 and 43 of the SSFA. The section places a duty on governing bodies of maintained schools to produce an annual report and provide for regulations to specify the content and other requirements including those relating to the distribution and availability of the annual report. The Government intends that such regulations will allow governing bodies to combine their annual report with their prospectus should they wish. The section also places a requirement on the governing body to provide the LEA with the information it requires about the discharge of the

governors' functions. The head teacher is required to provide the governing body or the LEA with information to enable them to fulfil their statutory functions.

Section 31: Control of school premises

98. This section replaces section 40 and Schedule 13 of the SSFA. It provides for regulations on the control of the occupation and use of school premises by governing bodies.

Section 32: Responsibility for fixing dates of terms and holidays and times of sessions

99. This section re-enacts section 41 of the SSFA. It sets out who is responsible for determining the dates of school terms and holidays as well as the times of school sessions and extends the provision to maintained nursery schools as they are now to have a governing body.

Section 33: Annual parents' meeting

100. This section requires governing bodies to hold an annual parents' meeting and describes their purpose. Regulations will set out the circumstances under which governing bodies will be exempt from holding such meetings. None of the other provisions in section 41 of the SSFA relating to processes and procedures are being re-enacted.

Section 34: Arrangements for government of new schools

101. This section re-enacts, with amendments, section 44 of the SSFA. It sets out the arrangements for the governance of new schools before and shortly after they open. The section therefore provides that where proposals for the establishment of a maintained school are approved, the LEA must make arrangement for the constitution of a temporary governing body and that it will exist until a permanent governing body has been constituted. The section requires that a permanent governing body should be constituted after the school opening date and by a time to be specified in regulations. The regulations will allow temporary governing bodies to continue in existence until the changes introduced by the Act come into force. The section also provides that regulations may cover matters relating to the temporary governing body including its meetings and proceedings, payment of allowances and the transition to a permanent governing body.

Section 35: Staffing of community, voluntary controlled, community special and maintained nursery schools

102. This section contains provisions regarding the staffing of community, voluntary controlled, community special and maintained nursery schools. It replaces the current arrangements set out in section 54 and Schedule 16 of the SSFA, which are repealed. It provides enabling powers for the Secretary of State, or the NAW, to make regulations, supplemented by statutory guidance, related to the appointment, discipline, suspension, and dismissal of staff.
103. The section provides for LEAs to be the employer of staff in community, voluntary controlled, community special, and maintained nursery schools and for such schools to have a head teacher and enables staff to be engaged to work in these schools otherwise than under a contract of employment.
104. The section provides for any regulations made under the section to be replaced by Part 1 of Schedule 2 at any time when a school's delegated budget is suspended by the LEA.

Section 36: Staffing of foundation, voluntary aided and foundation special schools

105. This section contains provisions regarding the staffing of foundation, voluntary aided and foundation special schools. It replaces the current arrangements set out in section 55 and Schedule 17 of the SSFA, which are repealed. It provides enabling powers for the Secretary of State, or the NAW, to make regulations, supplemented by statutory guidance, related to the appointment, discipline, suspension, and dismissal of staff.
106. The section provides for governing bodies to be the main employer of staff in foundation, voluntary aided and foundation special schools, for such schools to have a head teacher and also enables staff to be engaged to work in these schools otherwise than under a contract of employment.
107. The section provides for any regulations made under the section to have effect subject to Part 2 of Schedule 2 at any time when a school's delegated budget is suspended by the LEA.

***Schedule 2Part 1: Effect on staffing of suspension of delegated budget:
Community, voluntary controlled, community special and maintained nursery
schools***

108. **Part 1** of this Schedule provides for particular arrangements to come into effect in place of any regulations in relation to the staffing of community, voluntary controlled, community special and maintained nursery schools, at any time when a school's delegated budget is suspended. Subject to consultation with the governing body and the arrangements for the appointment and dismissal of reserved teachers at voluntary controlled schools, the LEA may appoint, suspend and dismiss staff at the school as the authority thinks fit.

***Schedule 2Part 2: Effect on staffing of suspension of delegated budget:
Foundation, voluntary aided and foundation special schools***

109. **Part 2** of this Schedule provides for particular arrangements to come into effect in relation to the staffing of foundation, voluntary aided and foundation special schools, at any time when a schools delegated budget is suspended. It provides for any staffing regulations under section 36 to have effect subject to the LEA having particular rights over the school's staff, the governing body's appointment and dismissal of staff, the educational qualifications of teachers giving secular education, and the conditions of service of persons employed for the care and maintenance of the school premises.

Section 37: Payments in respect of dismissal, etc

110. This section re-enacts the provisions of section 57 of the SSFA dealing with payments in respect of dismissal of staff from maintained schools, including payments for dismissal and securing the resignation of staff, payments required under contract or statutory provision, and payments for premature retirement. This section only differs from the SSFA provisions in so far as it includes an additional provision related to payments in respect of dismissal of staff employed for community purposes.
111. This additional provision requires the LEA to recover from the governing body any costs the authority has incurred arising from the premature retirement, dismissal, or in securing the resignation, of staff employed at the school for community or family services. However this subsection allows this requirement to be waived where the authority has agreed with the governors in writing that all or part of the costs will not be recovered in this way. The new parts of this section apply even if the delegated budget is withdrawn.
112. Where the governing body are required to pay the costs relating to dismissal or premature retirement of a member of staff employed for community purposes they may not do so out of the school's budget share.

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113. Where a member of staff is employed partly for the purpose of the school, say as a classroom assistant, and partly for community purposes, say supporting adult education, the costs must be apportioned between the school's budget share and the funds the school holds for expenditure on community purposes.
114. Regulations may also be made which provide for the recovery of costs in relation to the dismissal of staff employed for community purposes.

Section 38: Communication with schools

115. This section requires the Secretary of State and National Assembly when considering whether to issue guidance to have regard to the desirability of providing information about good educational practice, the benefits expected to result from any particular piece of guidance and the desirability of avoiding excessive material. It also imposes a duty on both the Secretary of State and National Assembly to produce an annual report listing all documents sent during the year to maintained schools

Section 39: Interpretation of Chapter 1

116. This section has the effect of applying to nursery schools the requirements for schools to have legally constituted governing bodies and the majority of the consequent powers, duties and responsibilities invested in those governing bodies. Currently all maintained schools are required to have governing bodies. Nursery schools are schools maintained by LEAs but are not within the definition of maintained schools in section 20(7) of the SSFA and are therefore not currently captured by this requirement.
117. It is proposed that nursery schools should have similar provisions for establishing governing bodies and making and amending instruments of government, as for maintained schools. As a consequence, nursery school governing bodies will take on similar responsibilities, powers and duties, as for maintained schools, including delegated budget shares, staffing, Ofsted inspection and conduct of the school. It is not proposed to apply admissions legislation fully to nursery schools: the responsibility for making decisions about the admission of a pupil will be dealt with by regulations.
118. The governing bodies of maintained nursery schools will have power to provide community facilities and services.

Section 40: Amendments of Part 2 of School Standards and Framework Act 1998

119. This section introduces Schedule 3 which provides that governing body may not use the school's budget share to finance any services they provide under the new power. The financial management of community services provided by governing bodies may be subject to requirements contained in the financial schemes prepared by LEAs under section 48 of the SSFA.
120. The Schedule also inserts a new section in the SSFA to provide cover by LEAs in cases where a third party has a claim arising from the provision of community services. The LEA may recover these costs from the school. However, these costs cannot be recovered from the school's budget share.
121. Where it appears to an LEA that a governing body are not managing their expenditure on community services satisfactorily, the LEA may suspend the governing body's right to a delegated budget.