



# Education and Inspections Act 2006

## 2006 CHAPTER 40

### PART 3

#### FURTHER PROVISIONS ABOUT MAINTAINED SCHOOLS

VALID FROM 01/04/2007

#### *Foundation, voluntary and foundation special schools*

### **33 Requirements as to foundations**

(1) After section 23 of SSFA 1998 insert—

#### **“23A Foundation and foundation special schools: requirements as to foundations**

- (1) This section applies to any foundation or foundation special school having a foundation if any one or more of the following conditions is met.
- (2) Condition A is that the school was established as a foundation or foundation special school in pursuance of proposals falling to be implemented under Schedule 2 to the Education and Inspections Act 2006.
- (3) Condition B is that the school—
  - (a) acquired its foundation, or
  - (b) became a school whose instrument of government provides for the majority of governors to be foundation governors,in pursuance of proposals falling to be implemented under regulations under section 24 of that Act.
- (4) Condition C is that the school changed category from voluntary aided school to foundation school in pursuance of proposals falling to be implemented under regulations under section 24 of that Act and has an instrument

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of government providing for the majority of governors to be foundation governors.

- (5) No institution may act as the foundation of a school to which this section applies unless—
- (a) it is a body corporate of a prescribed description,
  - (b) it is a charity (whether by virtue of section 23(3) or otherwise), and
  - (c) it has as its purpose, or one of its purposes, the advancement of the education of pupils at the school or schools in respect of which it acts as the foundation.
- (6) The foundation of a school to which this section applies shall, in carrying out its functions in relation to the school, promote community cohesion.
- (7) Where any members of the foundation are to be local authorities or persons appointed by local authorities, the proportion of voting rights exercisable by such members must not exceed 20 per cent. of the total voting rights exercisable by members.
- (8) Where any of the charity trustees in relation to the foundation are to be appointed by local authorities—
- (a) the proportion of the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total number of charity trustees, and
  - (b) the voting rights exercisable by the charity trustees who are appointed by local authorities must not exceed 20 per cent. of the total voting rights exercisable by charity trustees.
- (9) Regulations may disqualify persons from acting as charity trustee in relation to a school to which this section applies.
- (10) In this section and section 23B—
- “charity” has the same meaning as in the Charities Act 1993;
  - “charity trustee”, in relation to a school to which this section applies, means any individual who is for the purposes of the Charities Act 1993 a charity trustee in relation to the school's foundation;
  - “foundation” means a foundation established otherwise than under this Act;
  - “institution” has the same meaning as in the Charities Act 1993;
  - “purpose” includes object.

### **23B Powers of Secretary of State in relation to charity trustees of foundations**

- (1) Regulations may make provision enabling the Secretary of State in prescribed cases by direction—
- (a) to remove any charity trustee of a school to which section 23A applies, even though the person is not disqualified by virtue of subsection (9) of that section;
  - (b) to appoint a person to be a charity trustee of such a school (whether in place of a trustee removed by him under paragraph (a) or otherwise).

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- (2) Regulations under subsection (1) may make provision as to the effect of a direction given by the Secretary of State under the regulations, and may in particular provide for any such direction to have the same effect as an order of the Charity Commission for England and Wales under section 18 of the Charities Act 1993 for the removal or appointment of a charity trustee.
  - (3) Nothing in this section affects the powers of the Charity Commission for England and Wales under any enactment.”
- (2) In relation to any time before the commencement of section 1A(1) of the Charities Act 1993 (c. 10) (which provides for the establishment of the Charity Commission for England and Wales as a body corporate), any reference in section 23B of SSFA 1998 (as inserted by subsection (1) of this section) to the Charity Commission for England and Wales is to be read as a reference to the Charity Commissioners for England and Wales.

VALID FROM 25/05/2007

#### **34 Parent councils for certain foundation or foundation special schools**

After section 23 of EA 2002 insert—

##### **“23A Parent councils**

- (1) A school is for the purposes of this section a “qualifying school” if—
  - (a) it is a foundation or foundation special school in England,
  - (b) it has a foundation established otherwise than under the School Standards and Framework Act 1998, and
  - (c) the instrument of government for the school provides that the majority of governors are to be foundation governors.
- (2) The governing body of any qualifying school must establish in accordance with regulations a body to be known as a parent council.
- (3) The purpose of a parent council is to advise the governing body on matters relating to the conduct of the school and the exercise by the governing body of their powers under section 27.
- (4) Regulations may make provision as to—
  - (a) the person or persons by whom, and the manner in which, members of a parent council are to be elected or appointed,
  - (b) eligibility for election or appointment,
  - (c) the duration of membership, and
  - (d) meetings and proceedings of a parent council.
- (5) Regulations—
  - (a) must require the majority of members of a parent council to be parent members, and
  - (b) may enable a person who is not the parent of a registered pupil to be a member of a parent council if appointed in accordance with the regulations by the parent members.

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- (6) Regulations may confer functions relating to parent councils on the governing bodies of qualifying schools.
- (7) The governing body of a qualifying school must, in exercising their functions under this section with respect to the school's parent council, have regard to any guidance given from time to time by the Secretary of State.
- (8) The reference in subsection (1)(b) to a foundation is to be read in accordance with section 21 of the School Standards and Framework Act 1998.
- (9) In this section “parent member”, in relation to a parent council, means a member of the council who is the parent of a registered pupil at the school.”

### **35 Funding of voluntary aided schools: meaning of “capital expenditure”**

- (1) Part 2 of Schedule 3 to SSFA 1998 (funding of voluntary aided schools) is amended as follows.
- (2) In paragraph 3, as it applies in relation to England, omit sub-paragraph (3) (the definition of “capital expenditure” for the purposes of the Schedule).
- (3) After paragraph 9 insert—

#### **9A “Meaning of “capital expenditure”**

- (1) This paragraph applies for the purposes of this Schedule as it applies in relation to England.
- (2) Subject to sub-paragraphs (3) and (4), references in this Schedule to capital expenditure, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, are references to—
  - (a) expenditure of the body or, as the case may be, the promoters which falls to be capitalised in accordance with proper accounting practices, or
  - (b) expenditure which would fall to be so capitalised were it to be incurred by the body or, as the case may be, the promoters.
- (3) The Secretary of State may by regulations prescribe classes or descriptions of expenditure which are to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to—
  - (a) any appropriate body, or any prescribed class or description of appropriate body;
  - (b) any promoters, or any prescribed class or description of promoters.
- (4) The Secretary of State may by direction provide that, in the case of a particular voluntary aided school—
  - (a) expenditure of a particular appropriate body which is expenditure of a particular class or description;
  - (b) expenditure of particular promoters which is expenditure of a particular class or description,

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is to be treated for the purposes of this Schedule as being, or as not being, capital expenditure in relation to that body, or as the case may be, those promoters.

(5) Directions under sub-paragraph (4) may be expressed to have effect in specified circumstances or subject to specified conditions.

(6) In this paragraph an “appropriate body”, in the case of a voluntary aided school, means—

- (a) the governing body of the school, or
- (b) a relevant body in relation to the school (within the meaning of paragraph 5).

9B (1) For the purposes of paragraph 9A, “proper accounting practices”, in relation to an appropriate body or the promoters, in the case of a voluntary aided school, means those accounting practices—

- (a) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the appropriate body, or as the case may be, the promoters, or
- (b) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the local education authority.

(2) In the event of conflict between the accounting practices falling within paragraph (a) of sub-paragraph (1) and those falling within paragraph (b) of that sub-paragraph, only those falling within paragraph (a) are to be regarded as proper accounting practices.

(3) In this paragraph an “appropriate body”, in the case of a voluntary aided school, has the same meaning as in paragraph 9A.”

VALID FROM 25/05/2007

### **36 Disposals and changes of use of land**

Schedule 4 contains amendments of—

- (a) Schedule 22 to SSFA 1998 (disposals of land by foundation, voluntary or foundation special schools and disposals on discontinuance), and
- (b) section 77 of that Act (control of disposals or changes of use of school playing fields in relation to England),

and amendments which are consequential to those amendments.

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VALID FROM 30/06/2008

### **37 Staff at foundation or voluntary schools with religious character**

- (1) In section 58 of SSFA 1998 (appointment and dismissal of certain teachers at schools with a religious character), omit subsection (4) (which prevents the head teacher of a foundation or voluntary controlled school being a reserved teacher).
- (2) In section 60 of SSFA 1998 (staff at foundation or voluntary school with religious character)—
  - (a) in subsection (4), after “(whether foundation or voluntary controlled)” insert “in a case where the head teacher is not to be a reserved teacher”, and
  - (b) in subsection (6), after “voluntary aided school” insert “in Wales”.

VALID FROM 25/05/2007

### *General duties of governing body*

### **38 General duties of governing body of maintained school**

- (1) In section 21 of EA 2002 (general responsibility for conduct of school) after subsection (4) insert—
  - “(5) The governing body of a maintained school shall, in discharging their functions relating to the conduct of the school—
    - (a) promote the well-being of pupils at the school, and
    - (b) in the case of a school in England, promote community cohesion.
  - (6) The governing body of a maintained school shall, in discharging those functions, have regard to any relevant children and young people's plan.
  - (7) In discharging those functions, the governing body of a maintained school in England shall also have regard to any views expressed by parents of registered pupils.
  - (8) In this section “well-being”—
    - (a) in relation to a pupils at a school in England, means their well-being so far as relating to the matters mentioned in section 10(2) of the Children Act 2004, and
    - (b) in relation to pupils at a school in Wales, means their well-being so far as relating to the matters mentioned in section 25(2) of that Act.
  - (9) In this section “relevant children and young people's plan” means—
    - (a) in relation to a school in England—
      - (i) any plan published by the local education authority under section 17 of the Children Act 2004 (children and young people's plans: England), or
      - (ii) in a case where the local education authority are not required by regulations under that section to prepare and publish a

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<p>plan, any plan which is published by the authority and sets out their strategy for discharging their functions in relation to children and relevant young persons within the meaning of that section, and</p> <p>(b) in relation to a school in Wales—</p> <p>(i) any plan published by the local education authority under section 26 of the Children Act 2004 (children and young people's plans: Wales), or</p> <p>(ii) in a case where the local education authority are not required by regulations under that section to prepare and publish a plan, any plan which is published by the authority and sets out their strategy for discharging their functions in relation to children and relevant young persons within the meaning of that section.”</p> <p>(2) In section 28 of that Act (limit on power to provide community facilities etc.), after subsection (4) insert—</p> <p>“(4A) In exercising the power under section 27(1), the governing body of a maintained school shall have regard to any relevant children and young people's plan.</p> <p>(4B) In subsection (4A) “relevant children and young people's plan” has the meaning given by section 21(9).</p> <p>(4C) In exercising the power under section 27(1), the governing body of a maintained school in England shall also have regard to any views expressed by parents of registered pupils in circumstances where subsection (4)(a)(iii) does not apply.”</p>
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### *School admissions*

VALID FROM 27/02/2007

#### **39 General restriction on selection by ability**

- (1) No admission arrangements for a community, foundation or voluntary school may make provision for selection by ability unless—
- (a) they make provision for one of the permitted forms of such selection mentioned in section 99(2) of SSFA 1998, or
- (b) the school is a grammar school.
- (2) For the purposes of subsection (1) a school's admission arrangements make provision for selection by ability if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group to be so admitted by reference to ability.
- (3) In this section—
- “ability” means either general ability or ability in any particular subject or subjects;



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“admission arrangements” has the meaning given by section 88(2) of SSFA 1998;

“grammar school” has the meaning given by section 104(7) of SSFA 1998;

“relevant age group” has the meaning given by section 142(1) of SSFA 1998.

(4) In section 99 of SSFA 1998—

- (a) omit subsection (1) (which is re-enacted as subsection (1) of this section), and
- (b) in subsection (2) after “are” insert “ for the purposes of section 39(1) of the Education and Inspections Act 2006 ”.

#### **40 Code for school admissions**

(1) Section 84 of SSFA 1998 (code of practice) is amended in accordance with subsections (2) to (7).

(2) In subsection (1)—

- (a) for “a code of practice containing such practical guidance” substitute “ a code for school admissions containing such provision ”, and
- (b) after paragraph (b) insert—  
 “(ba) admission forums,”.

(3) In subsection (2), for the words from “include” to “other matters” substitute “ impose requirements, and may include guidelines setting out aims, objectives and other matters, ”.

(4) In subsection (3), for “to have regard to” substitute “ to act in accordance with ”.

(5) In subsection (5), omit “of practice” (in each place where it occurs).

(6) In subsection (6), after the definitions of “admission arrangements” and “the admission authority” insert—

““admission forum” means a forum established under section 85A, including a joint admission forum established in pursuance of regulations under subsection (3)(c) of that section;”.

(7) In the heading, and in the italic cross-heading immediately before section 84, for “of practice” substitute “ for school admissions ”.

(8) In section 85 of SSFA 1998 (making and approval of code of practice)—

- (a) in subsection (1) omit “of practice”, and
- (b) for the heading substitute “ Making and approval of code for school admissions ”.

(9) In relation to a code for school admissions issued under section 84(1) of SSFA 1998 after the passing of this Act, the requirement to consult which is imposed by section 85(2) of SSFA 1998 may be satisfied by consultation undertaken before the passing of this Act, even though the code takes account (to any extent) of any provision made by this Act.



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### Commencement Information

- II** S. 40 in force at 12.12.2006 for E. by S.I. 2006/2990, art. 2(a) (with arts. 3, 4) (as amended (17.1.2008) by S.I. 2008/54, arts. 1(1), 2)

VALID FROM 27/02/2007

### 41 Role of admission forums

- (1) Chapter 1 of Part 3 of SSFA 1998 (admission arrangements) is amended as follows.
- (2) In section 85A (admission forums), in subsection (1)—
- (a) omit the “and” at the end of paragraph (a), and
  - (b) at the end of paragraph (b) insert “, and
  - (c) in the case of an admission forum for the area of a local education authority in England, exercising any other functions that may be imposed on the forum by or under this Chapter.”
- (3) After subsection (1) of that section insert—
- “(1A) An admission forum for the area of a local education authority in England may prepare and publish reports on such matters connected with the admission of pupils to maintained schools in that area as may be prescribed.
- (1B) For the purposes of the preparation of a report under subsection (1A), an admission forum may request any of the following bodies to provide the forum with any information held by them which falls within a prescribed description and is specified by the forum in its request—
- (a) the local education authority which established the forum;
  - (b) any local education authority in England for an area which adjoins the area of the authority mentioned in paragraph (a);
  - (c) the governing body of any maintained school in the area for which the forum is established.
- (1C) A body mentioned in any of paragraphs (a) to (c) of subsection (1B) must comply with a request made by an admission forum in pursuance of that subsection.”
- (4) In subsection (3) of that section—
- (a) omit the “and” at the end of paragraph (b), and
  - (b) after that paragraph insert—
- “(ba) as to the preparation and publication of reports under subsection (1A), and”.
- (5) After subsection (3) of that section insert—
- “(3A) Regulations under subsection (3)(c) may, in relation to England, modify any provision of this Chapter in its application to a joint admission forum.”
- (6) After subsection (5) of that section insert—

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“(5A) Regulations may make provision with respect to the expenses of an admission forum for the area of a local education authority in England.

(5B) Except as provided by regulations under subsection (5A), the expenses of an admission forum for the area of a local education authority in England are to be defrayed by the local education authority by whom the forum was established.”

(7) In section 89 (procedure for determining admission arrangements) for subsection (10) substitute—

“(10) In this section, “the appropriate bodies”, in relation to an admission authority, means—

- (a) the bodies or persons whom they were required to consult under subsection (2), or would but for subsection (2A) have been required to consult, and
- (b) in the case of an admission authority for a maintained school in England, the admission forum for the area of the local education authority in which the school is situated.”

(8) In section 90 (reference of objections to adjudicator or Secretary of State)—

(a) in subsection (1) for paragraph (b) substitute—

“(b) an appropriate body wishes to make an objection about those arrangements, and”, and

(b) after subsection (10) insert—

“(11) In this section, “appropriate body” means, in relation to the admission arrangements determined by an admission authority—

- (a) any body or person whom the admission authority were required to consult under subsection (2) of section 89, or would but for subsection (2A) of that section have been required to consult, and
- (b) in the case of admission arrangements determined by an admission authority for a maintained school in England, the admission forum for the area of the local education authority in which the school is situated.”

VALID FROM 27/02/2007

## 42 Support for parental preferences

In section 86 of SSFA 1998 (parental preferences) after subsection (1) insert—

“(1A) A local education authority in England shall provide advice and assistance to parents of children in the area of the authority in connection with the preferences expressed or to be expressed by them in accordance with the arrangements made under subsection (1).”

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VALID FROM 08/01/2007

#### **43 Duty of governing body to implement decisions relating to admissions**

- (1) In section 88 of SSFA 1998 (admission authorities and admission arrangements), after subsection (1) insert—

“(1A) Where the admission authority for a community or voluntary controlled school is the local education authority, it is the duty of the governing body to implement any decision relating to the admission of pupils to the school which is taken by or on behalf of the admission authority.

- (1B) Subsection (1A) does not affect—

- (a) any right of appeal which the governing body may have by virtue of arrangements made in pursuance of section 95(2) (appeals in relation to children to whom section 87(2) applies, other than looked after children in England),
- (b) any right to refer the matter to the adjudicator which the governing body may have by virtue of section 95A(3) (references to the adjudicator in relation to looked after children in England to whom section 87(2) applies), or
- (c) the application of section 101(2A) or section 109(2).”

- (2) In section 86(2) of SSFA 1998 (duty to comply with parental preference) for “a local education authority and the governing body of a maintained school” substitute “the admission authority for a maintained school”.

- (3) In section 89C of SSFA 1998 (co-ordinated schemes for admission arrangements)—

- (a) in subsection (3) for “by virtue of this section” substitute “by virtue of section 89B”, and
- (b) after subsection (3) insert—

“(3A) Where any decision as to whether a child is to be granted or refused admission to a maintained school is (by virtue of regulations under subsection (3)) made by the local education authority although they are not the admission authority, the governing body of the school must implement the decision.”

- (4) In section 94(1) of SSFA 1998 (responsibility of local authority to make appeal arrangements) in paragraph (b) for the words from the beginning to “the authority” substitute “in a case where the governing body of a community or voluntary controlled school maintained by the authority are the admission authority”.

VALID FROM 27/02/2007

#### **44 Prohibition on interviews**

After section 88 of SSFA 1998 insert—

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#### **“88A Prohibition on interviews**

- (1) No admission arrangements for a maintained school may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school.
- (2) If the maintained school is one at which boarding accommodation is provided for pupils, subsection (1) does not apply in relation to any interview intended to assess the suitability of an applicant for a boarding place.
- (3) Where the admission arrangements for a maintained school make provision for a permitted form of selection by aptitude, subsection (1) does not prevent the arrangements from requiring or authorising any audition or other oral or practical test to be carried out in relation to an applicant solely for the purpose of ascertaining the applicant's aptitude in accordance with the arrangements.
- (4) In this section, “permitted form of selection by aptitude” is to be read in accordance with section 99(4).”

VALID FROM 08/01/2007

#### **45 Admission arrangements for schools with religious character: consultation and objections**

In section 89 of SSFA 1998 (procedure for determining admission arrangements) in subsection (2)—

- (a) omit the “and” at the end of paragraph (c), and
- (b) after paragraph (d) insert “and
- (e) in the case of a foundation or voluntary school which has a religious character for the purposes of Part 2, such body or person representing the religion or religious denomination in question as may be prescribed.”

VALID FROM 27/02/2007

#### **46 Restrictions on alteration of admission arrangements**

- (1) In section 89 of SSFA 1998 (procedure for determining admission arrangements) after subsection (1) insert—

“(1ZA) This section has effect subject to sections 89D and 90A (restrictions on alteration of admission arrangements in England).”

- (2) After section 89C of SSFA 1998 insert—

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### **“89D Power to restrict alteration of admission arrangements following establishment or expansion**

- (1) Subsection (2) applies in relation to a maintained school in England where—
  - (a) proposals for the establishment of, or the making of a prescribed alteration to, the school have been published under Part 2 of the Education and Inspections Act 2006 or under section 113A of, or Schedule 7 to, the Learning and Skills Act 2000,
  - (b) in the case of proposals for the making of a prescribed alteration to the school, the proposals are for an increase in the number of pupils that may be admitted to the school or for an enlargement of the premises,
  - (c) the proposals fall to be implemented (with or without modifications), and
  - (d) prescribed conditions are satisfied.
- (2) Regulations may provide that, where this subsection applies in relation to a maintained school—
  - (a) the admission arrangements for the initial period (as defined by subsection (7)) and each of a prescribed number of school years following that period are to be the arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified), and
  - (b) those arrangements may not be varied by the admission authority for the school except—
    - (i) to comply with any duty imposed on them by regulations under section 89(1A), or
    - (ii) in accordance with regulations under subsection (5).
- (3) Regulations under subsection (2) may exclude or modify any provision of section 89 (other than section 89(1A)) in its application to cases to which the regulations apply.
- (4) Regulations under subsection (2) may provide that in cases to which the regulations apply the admission arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified) are to be treated for the purposes of section 86(5) to (5B) as having been determined by the admission authority under section 89.
- (5) Regulations may prescribe circumstances in which an admission authority may refer to the adjudicator proposals to vary admission arrangements in cases to which regulations under subsection (2) apply.
- (6) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (5).
- (7) In this section—

“initial period” means—

  - (a) in relation to a maintained school which is being established, the period beginning with the day on which the school opens and ending with the beginning of the first school term to begin after the following July;

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(b) in relation to a maintained school which is increasing the number of pupils that may be admitted to the school or enlarging its premises, the period beginning with the first day on which additional pupils may be admitted or (as the case may be) the enlarged premises are in use and ending with the beginning of the first school term to begin after the following July;

“prescribed alteration” means an alteration prescribed for the purposes of section 18 of the Education and Inspections Act 2006.”

(3) After section 90 of SSFA 1998 insert—

**“90A Restriction on alteration of admission arrangements following adjudicator's decision**

(1) Where in accordance with section 90(8) the admission authority for a maintained school in England have revised any provisions of admission arrangements for a school year, this section applies except to the extent that the adjudicator or the Secretary of State determined under section 90(5B)(c), in relation to any change required, that this section was not to apply.

(2) In this section—

“the protected provisions” in relation to any admission arrangements, means provisions corresponding to those revised in accordance with section 90(8) or regulations under subsection (6) (as so revised);

“the required number” means such number as may be prescribed or such lesser number as is specified by the adjudicator or the Secretary of State under section 90(5B)(c) in relation to a particular change.

(3) The admission authority for the school—

- (a) must incorporate the protected provisions in determining the admission arrangements for each of the required number of school years following the school year in relation to which the revision in accordance with section 90(8) was made, and
- (b) may not vary those arrangements in such a way as to alter the protected provisions.

(4) Subsection (3) does not apply to the extent that—

- (a) the admission authority are required to determine or vary their admission arrangements in a way which alters the protected provisions in order to comply with any duty imposed on them by regulations under section 89(1A), or
- (b) the arrangements may be determined or varied in a way which alters those provisions in accordance with regulations under subsection (6).

(5) Regulations may exclude or modify any provision of section 89 (other than section 89(1A)) in its application to cases to which this section applies.

(6) Regulations may prescribe circumstances in which an admission authority to whom subsection (3) applies may refer to the adjudicator proposals to



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determine or vary their admission arrangements in a way which alters the protected provisions.

(7) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (6).”

VALID FROM 27/02/2007

#### 47 **Objections to admission arrangements**

(1) Section 90 of SSFA 1998 (reference of objections to adjudicator or Secretary of State) is amended as follows.

(2) After subsection (5) insert—

“(5A) Where the adjudicator or the Secretary of State is required by virtue of subsection (3)(a) or (b) or (5)(c) to decide whether to uphold an objection to admission arrangements, he may consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements, whether or not he would be required to do so for the purpose of determining the objection.

(5B) In the case of any objection referred to him under this section, the adjudicator or the Secretary of State (as the case may be) must publish a report containing the following—

- (a) his decision on the objection,
- (b) any decision he has made on whether it would be appropriate for changes to be made to the admission arrangements, whether in the light of his decision on the objection or otherwise,
- (c) if, in relation to a maintained school in England, he considers that any change required ought not to be protected under section 90A for the number of school years prescribed under section 90A(2), that section 90A is not to apply to that change or that the change will be protected only for such lesser number of school years as he may specify, and
- (d) his reasons for the decisions mentioned in paragraphs (a) to (c).

(5C) Where the adjudicator or the Secretary of State (as the case may be) decides that it would be appropriate for changes to be made to the admission arrangements, his decision may specify the modifications that are to be made to the arrangements.”

(3) Subsections (6) and (7) are omitted.

(4) For subsection (8) substitute—

“(8) The decisions of the adjudicator or the Secretary of State mentioned in subsection (5B)(a) and (b) shall, in relation to the admission arrangements in question, be binding on the admission authority and on all persons by whom an objection may be made under subsection (1) or (2); and, if the adjudicator or the Secretary of State has decided that it would be appropriate for changes to be made to the admission arrangements, those arrangements



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shall forthwith be revised by the admission authority in such a way as to give effect to the decision.”

(5) In subsection (9)—

(a) after paragraph (b) insert—

“(ba) requiring an admission authority for a maintained school in England to provide information which—

(i) falls within a prescribed description, and

(ii) is requested by the adjudicator or the Secretary of State for the purposes of his functions under this section;”, and

(b) in paragraph (c) for “any matters required to be published under subsection (7) are” substitute “ a report required to be published under subsection (5B) is ”.

(6) Omit subsection (10) (which has the effect of requiring certain cases to be referred by the adjudicator to the Secretary of State).

VALID FROM 08/01/2007

#### **48 Looked after children to whom section 87(2) of SSFA 1998 applies**

(1) In section 95 of SSFA 1998 (appeals relating to children to whom section 87(2) applies) after subsection (2) insert—

“(2A) Subsection (2) does not apply in relation to a decision made by or on behalf of a local education authority in England to admit to a school a child who is looked after by a local authority in England (provision for references to the adjudicator in relation to such a decision being made by section 95A).”

(2) After that section insert—

#### **“95A References relating to looked after children to whom section 87(2) applies**

(1) This section applies where—

(a) a local education authority in England are the admission authority for a community or voluntary controlled school, and

(b) a decision is made by or on behalf of the authority to admit to the school a child who, at the time when the decision is made, is looked after by a local authority in England and to whom (at that time) section 87(2) applies.

(2) The local education authority must give notice of the decision to the governing body of the school.

(3) The governing body of the school may, within the period of seven days beginning with the day on which they are notified of the decision, refer the matter to the adjudicator.

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- (4) A reference under subsection (3) may only be made on the ground that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (5) If the adjudicator determines that the admission of the child to the school would have the effect mentioned in subsection (4)—
  - (a) the decision to admit the child to the school shall cease to have effect, but
  - (b) the adjudicator may determine that another maintained school in England is to be required to admit the child.
- (6) A determination under subsection (5)(b) may only be made with the agreement of the local authority who look after the child.
- (7) A determination under subsection (5)(b) may not be made if—
  - (a) the child is permanently excluded from the other school, or
  - (b) the admission of the child to the other school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (8) If the adjudicator determines under subsection (5)(b) that another school is to be required to admit the child—
  - (a) the admission authority for the school shall admit the child to the school, and
  - (b) if the admission authority are not the governing body of the school, the admission authority shall give notice in writing to the governing body and head teacher of the school of the adjudicator's decision.
- (9) Regulations may make provision—
  - (a) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under this section;
  - (b) requiring an admission authority for a maintained school to provide information which—
    - (i) falls within a prescribed description, and
    - (ii) is requested by the adjudicator for the purposes of any such determination.”

VALID FROM 08/01/2007

#### **49 Procedure for giving directions under section 96 of SSFA 1998**

In section 97 of SSFA 1998 (procedure for giving directions under section 96)—

- (a) in subsection (2)(b)—
  - (i) for “the Secretary of State” (in both places where it occurs) substitute “ the appropriate authority ”, and
  - (ii) for “his determination” substitute “ its determination ”,
- (b) in subsection (3), for “the Secretary of State” substitute “ the appropriate authority ”,

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- (c) in subsection (4)—
  - (i) for “the Secretary of State” substitute “ the appropriate authority ”,
  - (ii) for “if he does so” substitute “ if it does so ”, and
  - (iii) in paragraph (a)(ii) for “the Secretary of State's” substitute “ the appropriate authority's ”,
- (d) in subsection (5) for “The Secretary of State” substitute “ The appropriate authority ”, and
- (e) after subsection (6) insert—
  - “(6A) In this section, “the appropriate authority” means—
    - (a) in relation to a local education authority in England, the adjudicator, and
    - (b) in relation to a local education authority in Wales, the Assembly.”

VALID FROM 08/01/2007

## **50 Direction to admit looked after child to specified school**

- (1) After section 97 of SSFA 1998 insert—

### **“97A Direction to admit looked after child to specified school**

- (1) A local authority in England may, in relation to a child looked after by them, give a direction under this section to the admission authority for any school in England other than a school for which the local authority are the admission authority.
- (2) A direction under this section shall not specify a school from which the child is permanently excluded.
- (3) Where a school is specified in a direction under this section, the admission authority shall admit the child to the school.
- (4) Subsection (3) does not affect any power to exclude from a school a pupil who is already a registered pupil there.

### **97B Procedure for giving direction under section 97A**

- (1) Before deciding to give a direction under section 97A, the local authority shall consult the admission authority for the school they propose to specify in the direction.
- (2) The admission authority for the school shall, within the period of seven days beginning with the day on which they are consulted as mentioned in subsection (1), inform the local authority whether they are willing to admit the child to the school without being directed to do so by the authority.
- (3) Where the local authority decide to give a direction under section 97A specifying a school—

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- (a) they shall, before doing so, serve a notice in writing of their decision on—
    - (i) the admission authority for the school,
    - (ii) if the school is a community or voluntary controlled school and the governing body of the school are not the admission authority, the governing body of the school,
    - (iii) if the school is maintained by a local education authority who are not the authority proposing to give the direction and are not the admission authority, the local education authority who maintain the school, and
    - (iv) the head teacher of the school, and
  - (b) they shall not give the direction until the period for referring the matter to the adjudicator under subsection (4) has expired and, if it is so referred, until the adjudicator has made such determinations under this section as it appears to him to be appropriate to make in connection with the reference.
- (4) The following persons—
- (a) the admission authority on whom a notice is served under subsection (3)(a)(i), and
  - (b) in the case of a notice relating to a child to whom (at the time of service of the notice) section 87(2) applies, the governing body of a community or voluntary controlled school on whom the notice is served under subsection (3)(a)(ii),
- may, within the period of seven days beginning with the day on which the notice was served, refer the matter to the adjudicator and, if they do so, shall inform the local authority.
- (5) A reference under subsection (4) may only be made on the ground that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (6) If the adjudicator determines that the admission of the child to the school would have the effect mentioned in subsection (5)—
- (a) the local authority may not give a direction under section 97A that the school admit the child, but
  - (b) the adjudicator may determine that another school in England is to be required to admit the child.
- (7) A determination under subsection (6)(b) may only be made with the agreement of the local authority who look after the child.
- (8) A determination under subsection (6)(b) may not be made if—
- (a) the child is permanently excluded from the other school, or
  - (b) the admission of the child to the other school would seriously prejudice the provision of efficient education or the efficient use of resources.
- (9) If the adjudicator determines under subsection (6)(b) that another school is to be required to admit the child, then—
- (a) if the local authority referred to in subsection (1) are the admission authority for that school they shall—

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- (i) admit the child to the school, and
- (ii) give notice in writing to the governing body and head teacher of the school of the adjudicator's decision, and
- (b) in any other case, the local authority shall specify that school in their direction under section 97A.

(10) A direction under section 97A shall be given by notice in writing and a copy of the notice shall be given by the local authority to the head teacher of the school.”

(2) In section 84 of SSFA 1998, after subsection (6) (which defines terms used in Chapter 1 of Part 3 of that Act) insert—

“(7) In this Chapter, references to a child who is looked after by a local authority are to be read in accordance with section 22(1) of the Children Act 1989.”

(3) In section 89 of SSFA 1998, in subsection (1A) omit the words “(within the meaning of section 22 of the Children Act 1989)”.

(4) In section 143 of SSFA 1998 (index) after the entry relating to “child (in Chapter 1 of Part 3 but not in sections 96 and 97)” insert—

“child looked after by a local authority (in section 84(7)).”  
 Chapter 1 of Part 3)

VALID FROM 08/01/2007

## **51 Directions to admit child to specified school: supplementary provisions**

(1) In section 94 of SSFA 1998 (appeal arrangements: general), in subsection (1)(a) after “section 96” insert “ or 97A ”.

(2) In section 96 of SSFA 1998 (direction to admit child to specified school)—

- (a) in subsection (3) for “the Secretary of State” substitute “ the appropriate authority (within the meaning of section 97) ”, and
- (b) in subsection (8) for “section 97” substitute “ sections 97 to 97C ”.

(3) After section 97B of SSFA 1998 (inserted by section 50) insert—

### **“97C Determinations under section 97 or 97B: supplemental**

Regulations may make provision in relation to England—

- (a) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under section 97 or 97B;
- (b) requiring an admission authority for a school to provide information which—
  - (i) falls within a prescribed description, and
  - (ii) is requested by the adjudicator for the purposes of any such determination.”

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VALID FROM 08/01/2007

## 52 Power of Assembly to make regulations about looked after children

(1) After section 97C of SSFA 1998 (inserted by section 51) insert—

*“Looked after children in Wales*

### **97D Power of Assembly to make regulations about admission of looked after children**

- (1) The Assembly may by regulations make provision about the admission of children looked after by local authorities in Wales (“looked after children”) to maintained schools in Wales.
  - (2) Regulations under subsection (1) may include provision requiring the admission authorities for such schools—
    - (a) to include in their admission arrangements such provision relating to the admission of looked after children as may be prescribed, which may in particular include provision for securing that, subject to prescribed exceptions, such children are to be offered admission in preference to other children;
    - (b) to admit looked after children in prescribed circumstances, subject to prescribed exceptions.
  - (3) Regulations under subsection (1) may provide that any of the preceding provisions of this Chapter—
    - (a) shall not apply in relation to looked after children;
    - (b) shall apply in relation to such children with prescribed modifications.”
- (2) In section 89 of that Act, in subsection (1A)—
- (a) after “maintained schools” insert “ in England ”, and
  - (b) after “a local authority” insert “ in England ”.

VALID FROM 27/02/2007

## 53 Schools with pre-1998 arrangements for selection by ability or aptitude

- (1) Section 100 of SSFA 1998 (permitted selection: pre-existing arrangements) is amended as follows.
- (2) In subsection (1) for the words from “so long as” to the end of the subsection substitute “so long as—
  - (a) the proportion of selective admissions in any relevant age group does not exceed the permitted proportion (as defined by subsection (1A)), and
  - (b) there is no significant change in the basis of selection.”

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(3) After subsection (1) insert—

“(1A) In subsection (1)(a), “the permitted proportion”, in relation to any relevant age group, means the lowest proportion of selective admissions provided for by the school's admission arrangements at any time since the beginning of the 1997-1998 school year.”

VALID FROM 08/01/2007

## 54 Pupil banding

(1) In section 101 of SSFA 1998 (permitted selection: pupil banding)—

(a) in subsection (1)—

(i) for “subsections (2) to (4)” substitute “ subsections (2) and (2A) ”, and

(ii) after “a maintained school” insert “ in England or Wales ”,

(b) after subsection (1) insert—

“(1A) Subject to subsections (2) and (2A), the admission authority for a maintained school in England may make provision for selection by ability to the extent that the arrangements are designed to secure—

(a) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among such one of the following groups as the admission arrangements may specify (“the reference group”)—

(i) children who are applicants for admission in that age group to any of two or more schools (including the school in question) in the area of the local education authority,

(ii) children in that age group who live in the area of the local education authority, or

(iii) children in that age group who live in England, and

(b) that no level of ability is substantially over-represented or substantially under-represented by comparison with its representation in the reference group.”,

(c) in subsection (2) for “Subsection (1)” substitute “ Subsection (1) or (1A) ”,

(d) after subsection (2) insert—

“(2A) If the admission authority for a maintained school in England is the local education authority, the authority may only introduce such provision for selection by ability as is mentioned in subsection (1) or (1A) with the consent of the governing body of the school.”,

(e) in subsection (3), after “maintained school” insert “ in Wales ”,

(f) in subsection (4), for the words from the beginning to “any school” substitute “ In the case of a school in Wales, admission arrangements to which subsection (1) applies are not authorised ”, and

(g) in subsection (5), for “subsection (1)” substitute “ subsection (1) or (1A) ”.



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- (2) In section 102 of SSFA 1998 (permitted selection: aptitude for particular subjects), in subsection (3), for “section 101(1)” substitute “ section 101(1) or (1A) ”.
- (3) In section 103 of SSFA 1998 (permitted selection: introduction, variation or abandonment of provision for such selection)—
- (a) in subsection (2) for “constitutes a prescribed alteration for the purposes of section 28” substitute “constitutes—
- (a) in relation to England, a prescribed alteration for the purposes of section 18 of the Education and Inspections Act 2006, and
- (b) in relation to Wales, a prescribed alteration for the purposes of section 28”, and
- (b) in subsection (3) —
- (i) for “section 101(1)” substitute “ section 101(1) or (1A) ”, and
- (ii) for “the objectives mentioned in section 101(1)(a) and (b)” substitute “ the objectives mentioned in section 101(1)(a) and (b), section 101(1A)(a)(i) and (b), section 101(1A)(a)(ii) and (b) or section 101(1A)(a)(iii) and (b) ”.

VALID FROM 08/01/2007

*Miscellaneous*

VALID FROM 25/06/2007

**55 Right of sixth-form pupils to be excused from attendance at religious worship**

- (1) Section 71 of SSFA 1998 (which, in relation to religious education and attendance at religious worship, makes provision for exceptions and special arrangements, and for special schools) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) If the parent of a pupil at a community, foundation or voluntary school requests that he may be wholly or partly excused from receiving religious education given at the school in accordance with the school's basic curriculum, the pupil shall be so excused until the request is withdrawn.
- (1A) If the parent of any pupil at a community, foundation or voluntary school other than a sixth-form pupil requests that he may be wholly or partly excused from attendance at religious worship at the school, the pupil shall be so excused until the request is withdrawn.
- (1B) If a sixth-form pupil requests that he may be wholly or partly excused from attendance at religious worship at a community, foundation or voluntary school, the pupil shall be so excused.”
- (3) In subsection (2), for “subsection (1)” substitute “ subsections (1) to (1B) ”.

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(4) In subsection (3), after “subsection (1)” insert “ or (1A) ”.

(5) In subsection (5), after “voluntary school” insert “ and is not a sixth-form pupil ”.

(6) After subsection (5) insert—

“(5A) Where a sixth-form pupil who is a boarder at a community, foundation or voluntary school requests that he be permitted—

- (a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or
- (b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which the pupil belongs,

the governing body shall make arrangements for giving the pupil reasonable opportunities for doing so.”

(7) In subsection (6), after “subsection (5)” insert “ or (5A) ”.

(8) For subsection (7) substitute—

“(7) Regulations shall make provision for ensuring that, so far as practicable, every pupil attending a community or foundation special school—

- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of his parent, and
- (b) attends religious worship unless withdrawn from attendance at such worship—
  - (i) in the case of a sixth-form pupil, in accordance with his own wishes, and
  - (ii) in any other case, in accordance with the wishes of his parent.”

(9) After subsection (7) insert—

“(8) In this section “sixth-form pupil” means any pupil who—

- (a) has ceased to be of compulsory school age, and
- (b) is receiving education suitable to the requirements of pupils over compulsory school age.”

VALID FROM 25/05/2007

## **56 Charges for music tuition**

(1) In section 451 of EA 1996 (prohibition of charges for provision of education) for subsection (3) substitute—

“(3) Regulations may prescribe circumstances in which subsection (2) does not apply in relation to tuition in singing or in playing a musical instrument.”

(2) In section 456 of EA 1996 (regulation of permitted charges), in subsection (6), after “tuition in” insert “ singing or in ”.

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VALID FROM 08/02/2007

**57 School funding**

Schedule 5 contains amendments of Chapter 4 of Part 2 of SSFA 1998 (financing of maintained schools).

**58 Removal of requirement to issue code of practice as to relationships between LEAs and maintained schools in England etc**

(1) Section 127 of SSFA 1998 (code of practice for securing effective relationships between LEAs and maintained schools) is amended as follows.

(2) In subsection (1)—

- (a) for “Secretary of State” substitute “ Assembly ”,
- (b) for “he” substitute “ it ”,
- (c) after “local education authorities” insert “ in Wales ”, and
- (d) for paragraph (b) substitute—

“(b) in relation to the discharge of such functions as the Assembly may determine for the purposes of this paragraph which are functions exercisable by or on behalf of such authorities in relation to such schools.”

(3) In subsection (2), after “maintained nursery school” insert “ in Wales ”.

(4) For subsection (3) substitute—

“(3) Subsections (1) and (2) of section 85 shall apply in relation to the code as they apply in relation to a code under section 84 relating to Wales.”

(5) In subsection (4), for “Secretary of State” substitute “ Assembly ”.

(6) Omit subsections (5) and (6).

(7) In the heading, and in the italic heading immediately above it, after “maintained schools” insert “ in Wales ”.

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