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# 1 INTRODUCTION

## The purpose of the Guide

1. This is the twelfth edition of *A Guide to the Law for School Governors*, and the fourth to be issued in CD-ROM format.
2. All school governors need to know what their legal responsibilities are and how these fit in with the responsibilities of the headteacher, the Local Authority (LA) and the Secretary of State for Children, Schools and Families. This Guide explains what the law says and how it affects governors. It should be read alongside the Law and Guidance sections listed at the end of each chapter, and any information on governance provided by the LA. In this edition, information can be found on:
  - community schools, including community special schools and maintained nursery schools (MNS);
  - foundation schools, including foundation special schools and Trust schools;
  - voluntary aided schools;
  - voluntary controlled schools.
3. It must be stressed that this Guide cannot replace the law, and it is not possible to offer a full explanation of the law. If specific problems arise, governing bodies may want to seek advice from their LA, or obtain their own legal advice.
4. This Guide has been revised to incorporate the changes that were current at 1 March 2009, but it may also refer to regulations that will be introduced at a later date.
5. At first sight, the range of responsibilities described in the Guide may seem daunting. However, governors do not need to be experts to tackle them. Help and advice is available from various sources in addition to this Guide. The headteacher of your school and officers of the LA can provide professional advice and support, while the clerk to your governing body will also be able to help. Governors can develop their own knowledge through training schemes and other materials available locally and nationally.

## Using the Guide

6. The main text refers to community schools (including community special and maintained nursery schools) and is mostly generic for all other categories. Where paragraphs or information refer only and specifically to other categories of school, they are flagged in the margin as:
  - **VA**: voluntary aided
  - **VC**: voluntary controlled schools
  - **F**: foundation, including foundation special schools.

Where the breakdown of information is more complex, the differences will be explained in the text without the use of flags.

7. Throughout the Guide, the term Local Authority (LA) is used instead of Local Education Authority (LEA) to describe the councils listed in Section 12 of the Education Act 1996, which have responsibility for providing education to pupils of school age in their areas (county councils where there is a two-tier system of government, otherwise unitary authorities). Where terms are referred to that are defined in legislation, for example “LEA governor”, the term Local Education Authority (LEA) is still used.
8. All references in the Guide to “the headteacher” include the acting headteacher at any time when the school does not have a permanent headteacher, or when an acting headteacher has been appointed in the absence of the headteacher.
9. At the end of each chapter of the Guide there is a reference section listing where governors’ rights and duties are set out in legislation. Acts and regulations referred to can

## 1. INTRODUCTION

be ordered from bookshops, accessed on the GovernorNet website at [www.governornet.co.uk](http://www.governornet.co.uk), the Office for Public Information website at [www.opsi.gov.uk](http://www.opsi.gov.uk), or the Stationery Office's publications website at [www.tso.co.uk](http://www.tso.co.uk)

10. At the end of the Guide you will find a brief glossary and a list of all written policy statements that governing bodies should have.

### **Obtaining copies of the Guide and other documents**

11. Copies of all the circulars mentioned in the Guide have been sent to your school. It is also possible to obtain copies of these and other Department for Children, Schools and Families (DCSF) publications from: Department for Children, Schools and Families Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham NG16 0DJ (tel: 0845 602 2260, fax: 0845 603 3360, minicom: 0845 605 5560, email: [dcsf@prolog.uk.com](mailto:dcsf@prolog.uk.com)). All Departmental publications are free unless a price is shown.
12. As changes are frequently introduced, and it is important that governors have current guidance, we will issue a new CD-ROM version of the Guide twice yearly. We will also maintain an up-to-date Guide on the GovernorNet website ([www.governornet.co.uk](http://www.governornet.co.uk)).
13. The DCSF believes that each member of a governing body needs to have his or her own copy of the Guide. Please contact the DCSF Publications Centre (see paragraph 11, above) to order extra copies. The Guide is also available at [www.governornet.co.uk](http://www.governornet.co.uk)

### **Other resources for governors**

14. Up-to-date information on all aspects of school governance is available on GovernorNet – the DCSF website for governors. It includes numerous sources of reference, legislation and a discussion board where governors can share information and experiences. GovernorNet can be accessed at [www.governornet.co.uk](http://www.governornet.co.uk). Free professional and confidential advice and assistance is also provided by GovernorLine at [www.governorline.info](http://www.governorline.info) (tel: 08000 722 181).  
  
For more information and details of other organisations offering training, support and guidance to governors, see the entry at the end of chapter 4.
15. Other useful websites include TeacherNet ([www.teachernet.gov.uk](http://www.teachernet.gov.uk)) and the DCSF website ([www.dcsf.gov.uk](http://www.dcsf.gov.uk)). It is not possible to list every website on which governors can access information. However, the Department is working towards merging GovernorNet and TeacherNet to form a single, all-encompassing new website.
16. When TeacherNet and GovernorNet are merged into this new site, users will be automatically redirected to it for some time. In the meantime, if more information on DCSF policy is required, the various websites can be accessed via the "A to Z" search facility on the DCSF website ([www.dcsf.gov.uk](http://www.dcsf.gov.uk)).

# 2 CONSTITUTION OF GOVERNING BODIES

## CHAPTER SUMMARY

The aim of this chapter is to explain the way governing bodies are formed, as set out in The School Governance (Constitution) (England) Regulations 2007 – the “Constitution Regulations”. Guidance to the Constitution Regulations can be found at [www.governor.net.co.uk](http://www.governor.net.co.uk)

1. All governing bodies of community, community special, foundation (F) (including qualifying foundation schools, foundation schools with and foundation schools without a foundation), foundation special, voluntary aided (VA), voluntary controlled (VC) and maintained nursery schools (MNS) can adopt a model for the size and membership of their governing body that best suits their circumstances.
2. The size of the governing body ranges from a minimum of 9 to a maximum of 20 people, except in VA schools and qualifying foundation schools where the minimum size of the governing body is to be 10 and 11 respectively. Within this range, each governing body can adopt the model of their choice, provided it complies with the guiding principles outlined in the following section. The only exceptions are:
  - in primary schools, where the governing body can appoint one or two sponsor governors, and in secondary schools, where the governing body can appoint up to four sponsor governors. These do not count towards the maximum size;
  - in a VA school or a qualifying foundation school, where the governing body appoints sponsor governors. In these cases the same number of foundation governors may be appointed to preserve their majority. The maximum size of a governing body at a VA and qualifying foundation primary school is 24 (20 plus two sponsor governors, plus two foundation governors to preserve the majority of two). The maximum size of a governing body at a VA and qualifying foundation secondary school is 28 (20 plus up to four sponsor governors, plus up to four foundation governors to preserve the majority of two).

## THE GUIDING PRINCIPLES

3. The guiding principles prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories. There are four compulsory stakeholder groups for community and community special schools as well as MNS and VA schools. Foundation and VC schools have five compulsory stakeholder groups. Sponsor governors form an optional group. The proportion of places on the governing body that must be reserved for the different categories is shown in the table in paragraph 24.

## PARENT GOVERNORS

4. Parents (including carers) of registered pupils at the school are eligible to stand for election for parent governorship at the school. In the case of MNS, any parent (or carer) of a child who is making use of the service provided by the nursery is eligible to stand for election for parent governorship at the school. Parent governors are elected by other parents at the school. If insufficient parents stand for election, the governing body can appoint parent governors.
5. For community, community special, VC schools and MNS, the Local Authority (LA) has the responsibility for arranging the elections, though it can delegate this to the headteacher.
6. For foundation, foundation special and VA schools, the governing body has the responsibility for arranging the elections, though the governing body can agree with the LA for it to make the arrangements (again, the LA can delegate to the headteacher).

VA  
F

7. Schools must make every reasonable effort to fill parent governor vacancies through elections. If insufficient parents stand for election the governing body can appoint:
- a parent of a registered pupil at the school, or if that is not possible;
  - a parent of a former pupil at the school, or if that is not possible;
  - a parent of a child of, or under, compulsory school age.

This also applies to community special schools and foundation special schools, but for these schools the appointment criteria are:

- a parent of a registered pupil at the school, or if that is not possible;
  - a parent of a former pupil at the school, or if that is not possible;
  - a parent of a child of or under compulsory school age with special educational needs for which the school is approved, or if that is not possible;
  - a parent with experience of educating a child with special educational needs.
8. A person is disqualified from election or appointment as a parent governor of a school if they are an elected member of the LA, or if they work at the school for more than 500 hours in any consecutive 12-month period (at the time of election or appointment). If a serving parent governor subsequently starts to work at the school for more than 500 hours in a consecutive 12-month period, they would serve out their term of office.

### **STAFF GOVERNORS**

9. Both teaching and support staff paid to work at the school are eligible for staff governorship. Staff governors are elected by the school staff and must be paid to work at the school – volunteers are ineligible. Any election that is contested must be held by ballot.
10. At least one staff governor (in addition to the headteacher – see paragraph 11) must be a teacher, but if no teacher stands for election, a member of the support staff can be elected to take that place. If a governing body has three or more staff governor places, at least one staff governor must be a member of the support staff, but if no member of the support staff stands for election, a teacher can be elected to take that place.
11. The headteacher is a member of the governing body by virtue of their office and counts in the member of the staff category. If the headteacher decides not to be a governor, he or she must inform the clerk of that decision in writing. The headteacher's place remains reserved for him or her and cannot be taken by anyone else.
12. School staff that are eligible for election as staff governors (i.e. who are paid to work at the school) are not eligible to serve as Local Education Authority (LEA) governors or community governors at their school. If they are paid to work at the school for more than 500 hours in any consecutive 12-month period they are not eligible for election or appointment as parent governors. However, staff can vote in parent governor elections if they are parents. They can also be governors at other schools. Their employment status will not affect their qualification for governorships in these categories at another school.

### **LOCAL EDUCATION AUTHORITY (LEA) GOVERNORS**

13. LEA governors are appointed by the LA. LAs can appoint any eligible person as an LEA governor. A person is disqualified from appointment as an LEA governor if they are eligible to be a staff governor of the school.

### **COMMUNITY GOVERNORS**

14. Community governors are appointed by the governing body to represent community interests. Community governors can be people who live or work in the community served by the school, or people who do not work or live close to the school but are committed to the good governance and success of the school.
15. In community special schools and foundation special schools, the governing body must

appoint as one of the community governors a person (if any) nominated by one or more voluntary organisations designated by the LA. If the school is based in a hospital, the community governor must be nominated by one or more primary care trusts, the National Health Service (NHS) trust or NHS foundation trust.

16. A person is disqualified from appointment as a community governor if he or she is eligible to be a staff governor at the school, or is an elected member of the LA to which the school belongs.

### FOUNDATION AND PARTNERSHIP GOVERNORS

17. VA  
VC  
F Foundation governors are appointed by the school's founding body, church or other organisation named in the school's instrument of government. They may hold their governorship in an ex officio capacity if they are the holder of an office specified in the instrument of government, for example a parish priest. If the school has a religious character the foundation governors must preserve and develop this. They must also ensure compliance with the trust deed, if there is one. If there is more than one body that has the right to appoint foundation governors, the instrument of government specifies the bodies concerned and the basis on which appointments are made.
18. F If the school has no foundation or equivalent body, the foundation governors are replaced by partnership governors appointed by the governing body after a nomination process. The governing body must ask parents of registered pupils at the school, and others in the community it considers appropriate (for example, staff, community organisations and other local bodies), to provide nominations for partnership governors.
19. Parents of registered pupils at the school, staff eligible to be staff governors, elected members of the LA and those employed by the LA in connection with education functions are not eligible to be partnership governors.

### SPONSOR GOVERNORS

20. Sponsor governors are appointed by the governing body. It is at the governing body's discretion whether they choose to appoint sponsor governors or not. If the governing body wants to appoint one or more sponsor governors, it must seek nominations from the sponsor(s).
21. The sponsor can be someone who gives substantial assistance to the school, financially or in kind, or who provides services to the school. The governing body can appoint a maximum of two persons as sponsor governors, or where the school is a secondary school, up to four sponsor governors.

### ASSOCIATE MEMBERS

22. The governing body can appoint associate members to serve on one or more governing body committees and attend full governing body meetings. The definition of associate member is wide and pupils, school staff and people who want to contribute specifically on issues related to their area of expertise (for instance, finance) can be appointed as associate members.
23. Associate members are appointed as members of any committees established by the governing body. They are appointed for a period of between one and four years and can be reappointed at the end of their term of office. Associate members are not governors and they are not recorded in the instrument of government.

**PROPORTION OF GOVERNOR PLACES BY CATEGORY AND TYPE OF SCHOOL**

24. This table shows the proportion of places that should be allocated to a governing body.

Type of school	Category of governor				
	Parent	Staff	LEA	Community	Foundation/ Partnership
<b>Community, community special, maintained nursery school</b>	At least one-third	At least two, but no more than one-third, including the headteacher	One-fifth	At least one-fifth	
<b>Foundation, foundation special (without a foundation)</b>	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter
<b>Foundation, foundation special (with a foundation) but not qualifying foundation schools</b>	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than 45%
<b>Qualifying foundation schools</b>	At least one, but enough to total at least one-third when counted with foundation governors who are eligible to be parent governors	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	They must outnumber the other governors by up to two
<b>Voluntary aided</b>	At least one, but enough to total at least one-third when counted with foundation governors who are eligible to be parent governors	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-tenth		They must outnumber the other governors by two
<b>Voluntary controlled</b>	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter

Proportions and percentages must be rounded up or down to the nearest whole number. Examples of constitutional models can be found in Annex A of the Statutory Guidance on the School Governance (Constitution) (England) Regulations 2007. See [www.governor-net.co.uk](http://www.governor-net.co.uk).

**TERM OF OFFICE**

25. The maximum term of office for all categories of governor is four years, but the governing body can decide to set a shorter term of office for one or more categories of governor. This does not apply to the headteacher or to any additional governors appointed by the LA



or the Secretary of State for Children, Schools and Families. If the term of office for a particular category of governor is to be shorter than four years, this has to be recorded in the instrument of government. The term of office cannot be shorter than one year and cannot be varied for individual governors. Any governor may, at any time, resign by giving written notice to the clerk.

### REMOVAL FROM OFFICE

26. The governing body may remove from office:
- community governors or partnership governors;
  - any parent governor who has been appointed, but not an elected parent governor. (A parent governor is considered to be elected if he or she stood for election for parent governorship. Whether or not a ballot took place is not relevant to this issue);
  - any sponsor governors. (It may also do so at the request of the nominating body.)
27. LEA and foundation governors may be removed from office by the person who appointed them. The person who appointed them must give written notice to the clerk to the governing body, and the governor in question, of the governor's removal.
- N.B. The governing body may not remove any staff governors.

### PROCEDURE FOR REMOVAL

28. Reasons for proposed removal of any community governor, partnership governor, appointed parent governor or sponsor governor must be given by the governor(s) proposing the removal. The governor in question must be given the opportunity to make a statement in response before a vote is taken on a resolution to remove him or her.
29. In the case of the removal of a community governor nominated by a voluntary organisation, primary care trust, NHS trust, NHS foundation trust, or sponsor governor proposed for removal at the request of the nominating body, the nominating body proposing the removal must inform the clerk to the governing body. The governor in question must also be notified in writing of the reasons for proposing his or her removal. The clerk to the governing body must give the reasons for the proposed removal to the governing body, and the governor proposed for removal must be given the opportunity to make a statement in response, before a vote is taken on a resolution to remove him or her.
30. The same procedure applies to the removal of an ex officio foundation governor, except that it is the person requesting the removal of the ex officio foundation governor who must inform the clerk and the governor in question.
- VA  
VC  
F
31. A governing body's decision to remove any community, partnership, sponsor or appointed parent governor must be confirmed at a second meeting not less than 14 days after the first meeting. At both meetings the removal of the governor in question must be specified as an item of business on the agenda.
32. The removal of an ex officio foundation governor must follow the procedure outlined in the above paragraph.
- VA  
VC  
F

### INSTRUMENT OF GOVERNMENT

33. The instrument of government is the document that records the name of the school and the constitution of its governing body. The governing body drafts the instrument and submits it to the LA. The LA must check if the draft instrument complies with the statutory requirements, including the relevant guiding principles for the constitution of governing bodies. If the instrument complies with the legal requirements, the LA will make the instrument. The governing body and LA can review and change the instrument at any time.
34. Before the governing body submits the draft instrument to the LA, it has to be approved by the foundation governors and, where relevant, any trustees and/or the appropriate
- F

religious body.

35. For community special schools and foundation special schools, the instrument should also record the name of the body that has the right to nominate a person for appointment as a community governor.

### **SURPLUS GOVERNORS**

36. If there are more governors in a particular category than are recorded in the instrument of government, the governor(s) of that category may serve out their term of office.

### **QUALIFICATIONS AND DISQUALIFICATIONS**

37. Schedule 6 of the Constitution Regulations covers the qualifications and disqualifications of governors.
38. A governor must be aged 18 or over at the time of their election or appointment and cannot be a registered pupil at the school. A person cannot hold more than one governorship at the same school.
39. A person is disqualified from holding or from continuing to hold office as a governor or associate member if he or she:
- is detained under the [Mental Health Act 1983](#) during his or her period of office;
  - fails to attend the governing body meetings – without the consent of the governing body – for a continuous period of six months, beginning with the date of the first meeting missed (not applicable to ex officio governors);
  - is subject to a bankruptcy restriction order or an interim order;
  - has had their estate sequestrated and the sequestration order has not been discharged, annulled or reduced;
  - is subject to:
    - i) a disqualification order or disqualification undertaking under the Company Directors Act 1986
    - ii) a disqualification order under Part 2 of the [Companies \(Northern Ireland\) Order 1989](#)
    - iii) a disqualification undertaking accepted under the [Company Directors Disqualification \(Northern Ireland\) Order 2002](#)
    - iv) an order made under Section 492(2)(b) of the [Insolvency Act 1986](#) (failure to pay under a County Court administration order);
  - has been removed from the office of charity trustee or trustee for a charity by the Charity Commissioners or High Court on grounds of any misconduct or mismanagement, or under [Section 34 of the Charities and Trustees Investment \(Scotland\) Act 2005](#) from participating in the management or control of any body;
  - is included in the list of people considered by the Secretary of State as unsuitable to work with children;
  - is disqualified from working with children or subject to a direction under [Section 142 of the Education Act 2002](#);
  - is disqualified from registration for childminding or providing day care;
  - is disqualified from registration under Part 3 of the [Childcare Act 2006](#);
  - has received a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) in the five years before becoming a governor or since becoming a governor;
  - has received a prison sentence of two-and-a-half years or more in the 20 years before becoming a governor;
  - has at any time received a prison sentence of five years or more;
  - has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor;
  - refuses to allow an application to the Criminal Records Bureau for a criminal records certificate.

## THE LAW

**N.B. As legislation is often amended and new Regulations introduced, references made in this Guide may point to legislation that has been superseded. For an up-to-date list of legislation applying to schools, refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 2002: [Sections 19 and 20](#)

The School Governance (Constitution) (England) Regulations 2007: [SI 2007/957](#)

The Education Act 1996: [Section 576\(1\), \(3\) and \(4\)](#), read together with the Education Act 2002: [Section 212\(2\)](#), gives a definition of “parent” (see also the definition of parent in the Constitution Regulations)

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# 3 GOVERNING BODY POWERS, DUTIES AND PROCEDURES

## CHAPTER SUMMARY

This chapter gives a brief overview of some of the powers and duties that governing bodies have been given by Parliament. Some duties and powers are dealt with in more detail in later chapters. The chapter also explains the procedures for holding governing body meetings and establishing committees.

### STATUS OF THE GOVERNING BODY

1. The governing bodies of community, community special and maintained nursery schools are corporate bodies. A corporate body has a legal identity separate from that of its members.
2. The governing bodies of foundation, foundation special, voluntary controlled and voluntary aided schools are corporate bodies with exempt charitable status (but note that once Section 9 of the Charities Act 2006 is implemented in relation to these governing bodies, they will be excepted charities, which means that they will be subject to a degree of regulation by the Charities Commission, and will have to register if they are above the financial threshold).
3. As a corporate body, the governing body may have a seal to validate documents, such as deeds. Legal stationers can give advice on the type and cost of a seal. When the seal is used, the chair and another governor who has been duly authorised by the governing body should also sign the document to validate the seal.
4. Governing bodies are corporate bodies and, because of this, individual governors are generally protected from personal liability as a result of the governing body's decisions and actions. Provided they act honestly, reasonably and in good faith, any liability will fall on the governing body even if it has exceeded its powers, rather than on individual members.
5. Individual governors have no power or right to act on behalf of the governing body, except where the whole governing body has delegated a specific function to that individual, or where regulations specify that a function is to be exercised in a particular way. The governing body is legally liable for all actions taken in its name by individuals or committees to which it has delegated functions. The governing body should therefore ensure that decisions to delegate specific responsibilities are properly minuted and recorded. The Decision Planner available on GovernorNet may be useful in deciding where functions can be delegated.
6. The governing bodies of foundation, voluntary aided and voluntary controlled schools automatically have charitable status (see paragraph 2, above). Governing bodies may wish to contact the Charities Commission to find out how charitable status can help them make the most effective use of gifts and other support from the business community, parents and others.

### POWERS AND DUTIES OF THE GOVERNING BODY

7. Parliament has given a range of duties and powers to governing bodies under the Education Acts. Later chapters of this Guide explain governing bodies' powers and duties in more detail, but at maintained schools, the governing body has general responsibility for the conduct of the school with a view to promoting high standards of educational achievement (see Section 21 of the Education Act 2002).
8. Governors should act at all times with honesty and integrity and be ready to explain their actions and decisions to staff, pupils, parents and anyone with a legitimate interest in the school.

### GOING INTO SCHOOL

9. Individual governors do not have an automatic right to enter the school whenever they wish. However, they need to be able to visit from time to time in order to develop their understanding of the school. These visits enable them to fulfil their statutory responsibility for the conduct of the school. Governors should arrange their visits with the headteacher, who has responsibility for the day-to-day management of the school.
10. It is often useful to draw up a policy on governors' visits to cover matters such as giving notice and holding feedback sessions. The governing body should plan visits to cover a wide range of school work and each visit should have a clear purpose. Visits by governors can be useful and informative. They do not replace professional inspection or the monitoring and evaluation carried out by the headteacher.

### DEALING WITH COMPLAINTS

11. [Section 29](#) of the Education Act 2002 requires all governing bodies to have a procedure to deal with complaints relating to aspects of the school and to any community facilities or services that the school provides. The law also requires that the procedure must be publicised.
12. Local Authorities (LAs) are required to set up a procedure for dealing with certain types of complaint, for example complaints about the curriculum or collective worship in a school. The governing bodies' complaints procedure will not replace the arrangements made for those types of complaint. In addition, there are certain complaints that fall outside the remit of the governing bodies' complaints procedure, for example staff grievances or disciplinary procedures. Separate procedures should be in place to deal with these cases (see chapter 10 of this Guide, Staffing).
13. The governing body should make efforts to ensure that anyone who wishes to make a complaint is given fair treatment and a chance to state their case either in person or in writing. It is recommended that decisions taken, and the reasons why, should be given in writing, and that the person complaining should be given details of his or her rights of appeal at that time. It is advisable that timescales are set for dealing with complaints so that the process does not take too long. Governing bodies can get advice on how to deal with complaints from the LA. A [toolkit document](#) containing key messages to help schools to draw up a complaints procedure or modify an existing procedure is also available on GovernorNet.
14. A complaint may be made to the Secretary of State for Children, Schools and Families if a person believes that a governing body or LA is acting "unreasonably", or is failing to carry out its statutory duties properly (see [Sections 496 and 497](#) of the Education Act 1996). However, intervention can only occur if the governing body or the LA has failed to carry out a legal duty or has acted unreasonably in the performance of a duty. Intervention would have to be expedient in the sense that there would have to be something that the Secretary of State for Children, Schools and Families could instruct either party to do to put matters right. The Secretary of State must be satisfied that a decision is unreasonable in the sense that no reasonable authority or governing body, acting with due regard to its statutory responsibilities, would have reached that decision.

### EQUALITY DUTIES

15. The governing body has responsibility for making sure that the school complies with the equality duties set out in the [Race Relations Act 1976 \(as amended by the Race Relations Act 2000\)](#), the [Disability Discrimination Act 1995 \(as amended by the Disability Discrimination Act 2005\)](#) and the [Sex Discrimination Act 1975 \(as amended by the Equality Act 2006\)](#). The general duty on schools is to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity in the area of race, disability and gender. Specific duties require schools to implement specific equality schemes in those areas.

16. Governors may find it helpful to ask a senior member of staff to prepare a draft scheme for consideration, involving people inside and outside the school. A senior member of staff or a governor should also have overall responsibility for ensuring schemes are implemented and monitored. This would include, for example, monitoring reports of racist incidents and the action taken. (See chapter 17 of this Guide, Equal opportunities and school governors, paragraphs 1–34, for a full description of the general and specific duties of governing bodies under the race, disability and gender legislation.)

### RELATIONSHIP WITH THE HEADTEACHER

17. In a well-managed school, the headteacher and governing body work in close partnership. The respective roles and responsibilities of governing bodies and headteachers are set out in the [Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000](#).
18. The governing body must exercise its functions with a view to fulfilling a largely strategic role in the running of the school. It should establish the strategic framework by:
- setting aims and objectives for the school
  - adopting policies for achieving those aims and objectives
  - setting targets for achieving those aims and objectives.
19. The governing body should monitor and evaluate progress of its strategy and regularly review the framework for the school in the light of that progress. When establishing the strategic framework and reviewing progress, the governing body should consider any advice given by the headteacher and the School Improvement Partner (SIP). The school improvement plan will generally provide the main mechanism for the strategic planning process.
20. The headteacher has responsibility for the internal organisation, management and control of the school and for implementation of the strategic framework established by the governing body. Governors are not expected to be involved in the detail of the day-to-day management of the school.
21. A good headteacher will discuss all the main aspects of school life with the governing body and will expect the governing body to both challenge and support the school. Acting as a “critical friend”, the governing body should offer support and constructive advice, but governors should not be deterred from questioning proposals and seeking further information to enable them to make sound decisions. The headteacher should give the governing body enough information to enable it to feel confident that both it and the headteacher are fulfilling their statutory responsibilities.
22. A good governing body will delegate enough powers to allow the headteacher to perform his or her management duties as effectively as possible. The headteacher must report to the governing body regularly on how those delegated powers have been exercised and the governing body should keep the delegation under regular review. The headteacher is also accountable to the governing body – both for the functions performed as part of the headteacher’s normal role, and for powers delegated by the governing body. Useful advice on the subject can be found in [Guidance on the Roles of Governing Bodies and Headteachers](#). The conditions of employment for headteachers are set out in the [School Teachers’ Pay and Conditions](#) document, which is updated each year. This document has legal force. See chapter 10 of this Guide (Staffing).
23. To assist the governing body in carrying out its functions, the headteacher has a duty to provide the governing body with such reports in connection with the exercise of his or her functions as the governing body requires.

### RELATIONSHIP WITH THE LA

24. The governing body is responsible for raising standards through its three key roles of setting strategic direction, ensuring accountability, and monitoring and evaluating school

performance. The LA should support the school's efforts to achieve continuous improvement. The relationship between schools and LAs is based upon intervention in inverse proportion to success, and maximum delegation of funding and responsibility to schools. These principles enable schools to operate largely autonomously. However, the governing body is accountable to the LA for the way the school is run.

25. Where a school is causing concern, or a governing body is acting in a way that is detrimental to the performance of pupils at the school, the LA must inform the governing body and the headteacher of this. The LA should also inform other stakeholders, for example the diocese, the foundation or the Learning and Skills Council (LSC), of its concerns and offer appropriate support to the school. Where necessary, the LA can use its powers to intervene to ensure a school can raise standards. For schools causing concern there is statutory guidance: *Statutory Guidance on Schools Causing Concern* (2007).

## TARGET-SETTING

**(N.B. Paragraphs 26 to 33, below, do not apply to maintained nursery schools.)**

26. Governing bodies are required to set targets for pupils' performance in Key Stage 2 national curriculum tests, and in public examinations for the year after pupils reach age 15, and submit them to the LA. On the 14 October 2008 the Secretary of State announced an end to Key Stage 3 National Curriculum testing from 2009 onwards. As a result governing bodies will no longer be required to set the following statutory targets:
- The proportion of pupils achieving level 5+ in both English and mathematics in KS3 NC tests (National Indicator 74)
  - The proportion of pupils achieving level 5+ in science in KS3 NC tests (National Indicator 83)
  - The proportion of pupils making 2 levels progress in English Key Stage 2–3 (National Indicator 95)
  - The proportion of pupils making 2 levels progress in mathematics Key Stage 2–3 (National Indicator 96)
  - The proportion of pupils making 2 levels progress in English Key Stage 3–4 (National Indicator 97)
  - The proportion of pupils making 2 levels progress in mathematics Key Stage 3–4 (National Indicator 98)
27. The Education (School Performance Targets) (England) Regulations 2004 have been amended to reflect the new requirements from 31 December 2008.
28. At some special schools, no children will be expected to meet these levels. Since December 2001, schools that set "zero" targets have been required to set measurable performance targets at the relevant key stages using P scales or other performance criteria, where appropriate. Paragraphs 29–33, below, provide information on the duties of governing bodies to set targets. More detailed advice can be found in the Department for Children, Schools and Families' (DCSF's) [guidance for LAs](#) on setting education performance targets: LA statutory targets for Key Stages 2 and 4; early years outcomes; children in care; black and minority ethnic groups; and attendance.

### Duty to set targets

29. There is a focus on pupils reaching the target levels expected for their age in English and mathematics, and, at the same time, on improving rates of progress. [The Education \(School Performance Targets\) \(England\) Regulations 2004](#) were amended to reflect the new target-setting requirements from 12 November 2007. This was to help tackle uneven performance and narrow gaps in achievement, particularly between the most challenged and vulnerable groups and their peers.



30. Governing bodies should be involved at an early stage so that they can help set targets and discuss how to make improvements. Governors should talk to the headteacher, SIP and others, to ensure that the school has effective systems in place for monitoring pupil progress and is using previous results supported by recent teacher assessment to set challenging targets.
31. All schools (apart from middle schools that have pupils entering in Year 6 or Year 9) have a statutory requirement to set targets by 31 December each year for performance five terms later. So, governing bodies would need to have set targets by 31 December 2008 for the tests/examinations that will be taken in summer 2010. Middle schools are required by statute to set their targets as soon as possible after the beginning of the school year in which the pupils are due to take the relevant key stage tests.
32. Each year, targets must be set for the percentage of pupils that the governing body anticipates will, in the following school year, be registered pupils in the final year of Key Stages 2 and will achieve results as follows.

For Key Stage 2	For Key Stage 4
Level 4 or above in national curriculum tests in both English and mathematics	Level 5 or above in national curriculum tests in science
Proportion progressing two national curriculum levels in English	Proportion progressing two national curriculum levels in English
Proportion progressing two national curriculum levels in mathematics	Proportion progressing two national curriculum levels in mathematics

33. For pupils taking examinations, schools should include those studying for qualifications (including Level 2 and AS level qualifications) approved for use pre16 under [Section 96](#) of the Learning and Skills Act 2000. Targets can therefore be set which reflect ambitions for pupils taking qualifications other than GCSEs and GNVQs. More details can be found on the [National Database of Accredited Qualifications website](#), including the full list of approved qualifications and their equivalency. The governing body cannot change the targets once set.

### Changes to legislation

34. The [Education \(School Performance Targets\) \(England\) Regulations 2004](#) have been amended so that governing bodies are no longer required to set targets for the joint English and mathematics threshold and progression measures at Key Stage 3. These amendments came into force on 31 December 2008.

### FURTHER EDUCATION IN SCHOOLS

35. Further education (FE) is defined in [Section 2](#) of the Education Act 1996. It means full-time and part-time education for persons over compulsory school age (including vocational, social, physical and recreational training) and associated organised leisure-time occupation.
36. By virtue of [Section 2](#) of the Education Act 1996, FE may be provided in schools, and it is the governing body which decides whether or not to offer this type of provision. However, the governing body of a community or foundation special school must obtain the consent of the LA to provide or stop providing FE. The responsibilities of governing bodies in determining FE provision in schools are set out at [Section 80](#) of the Schools Standards and Framework Act 1998.
37. Schools may offer FE courses in the evenings, at weekends, during school holidays or during term time when there are empty classrooms during the day. FE students may also

be educated alongside GCSE or A level students. Where FE students are taught in maintained schools in classes with school pupils, special conditions apply. These are contained in the [Education \(Further Education in Schools\) Regulations 1999](#).

38. The LSC has the responsibility for securing the provision of FE facilities generally and for funding post-16 provision. Under [Section 5](#) of the Learning and Skills Act 2000, the LSC may fund private training providers to deliver this provision, and this could be on school premises, by way of contractual arrangements between the training provider and the governing body of the school. See chapter 22 of this Guide, Extended schools.
39. If governors decide to provide FE to members of the local community, they must ensure that such provision does not compromise to a significant extent their ability to provide for the special educational needs of their own pupils.
40. Governing bodies of community special and foundation special schools should consider very carefully the effect that offering FE provision would have on their schools. Before offering courses, they must ensure that:
  - if the courses are being offered during the school day, sufficient and suitable accommodation meeting the standards described in [Building Bulletin 77](#) will still be provided for the pupils on the roll of the school;
  - those attending FE courses and having contact with the school's pupils are not older than the maximum age of pupil the school is approved to take, and that their special educational needs are "compatible" with those of the pupils on the school's roll, as neither party must be disadvantaged;
  - those attending courses during the school day, who are older than the maximum age the school is approved to take, will use accommodation separate from that of the school's pupils;
  - by offering courses to adults, the pupils' health, safety and welfare are not compromised;
  - the overall "complexion" of the school will not be changed;
  - where the school's staff will be used to deliver a course, pupil-to-teacher ratios and the support staff working with pupils remain at an appropriate level.

#### **INSURANCE COVER**

41. The governing body as a whole should take out insurance to cover its potential liability for negligence in carrying out its responsibilities. Cover must now be regarded as essential. Although legal action against teachers and schools for breaches of professional duty is still quite rare, claims (for example, for "failure to educate") are becoming more frequent. The LA will either pay for such insurance from central funds or it may include funding for this in the school's delegated budget. In the former case, the governing body can request delegated funding if it wishes to arrange its own insurance. If the governing body makes its own arrangements, rather than buying in to a policy arranged by the LA, the LA is entitled to check that the arrangements are adequate, and if they believe they are not, can charge the cost of additional insurance to the delegated budget. Similar considerations apply to other types of insurance.
42. The governing body may also wish to consider obtaining insurance protecting members of its committees against personal liability arising from their office. However, personal claims against school governors are very rare indeed. This type of insurance cover is unlikely to represent good value for money because governors acting honestly, reasonably and within their powers will not incur personal liability (see paragraph 4, above). However, it should be recognised that it may be difficult to persuade good people to serve in this capacity unless they are made completely secure against personal liability.
43. Governors are not disqualified by the normal rules on pecuniary interests as described in the [School Governance \(Procedures\) \(England\) Regulations 2003](#) (as amended) from participating in meetings about obtaining personal indemnity insurance. They can consider and vote on proposals for the governing body to take out insurance protecting members against liabilities incurred by them, arising out of their office.

## WORKING TOGETHER: GIVING CHILDREN AND YOUNG PEOPLE A SAY

44. The [Education Act 2002](#) places a duty on LAs and governing bodies of maintained schools, in the exercise of their functions, to have regard to any guidance from the Secretary of State for Children, Schools and Families on consultation with pupils in taking decisions affecting them. This guidance complements a range of other initiatives aimed at greater involvement of young people and develops their skills of active participation. The [guidance](#) was sent to all schools and LAs in April 2004.

## POWER TO INNOVATE

45. Any governing body that is prevented by any education legislation from implementing an innovative idea for raising standards can apply to the Secretary of State for Children, Schools and Families, following consultation with relevant bodies, to vary legislation for a pilot period. Pilots may last for up to three years, with the possibility of extension for up to a further three years.

## GOVERNING BODY PROCEDURES

46. The [School Governance \(Procedures\) \(England\) Regulations 2003](#) (as amended) (the "Procedures Regulations") cover the procedures that governing bodies are required to follow.

### Election of the chair and vice-chair

47. The governing body must elect a chair and a vice-chair. There are no regulations prescribing the election process as it is believed that governing bodies are best placed to decide how to organise this, but those standing for election should withdraw from the meeting when a vote is taken. Governors who are paid to work at the school, for instance the headteacher and staff governors, cannot be elected as chair or vice-chair. The chair and vice-chair can resign at any time by giving notice in writing to the clerk.

### Terms of office of the chair and vice-chair

48. The governing body decides on the chair and vice-chair's terms of office before the election. The minimum term of office is one year and the maximum period is four years. If a governor is elected chair or vice-chair and his or her term of office as a governor is due to end before that determined for the office of the chair or vice-chair, then the chair or vice-chair's term of office ends when the governor's term of office ends.
49. When the office of chair or vice-chair becomes vacant, the governing body must elect a new chair or vice-chair at the next meeting. If the chair is absent from a meeting, or if the office of chair is vacant, the vice-chair will act as chair for all purposes.

### Delegation of functions to the chair and vice-chair in cases of urgency

50. The chair or vice-chair has the power to carry out functions of the governing body if a delay in exercising a function is likely to be seriously detrimental to the interests of the school, a pupil at the school or their parents, or a person who works at the school. This power excludes matters related to the alteration and closure of schools, change of school category, change of school name, approval of the budget, discipline policies and admissions. Any action taken under this power must be reported to the governing body.

### Removal of the chair or vice-chair from office

51. The governing body can remove the chair or vice-chair from office unless the chair has been nominated by the Secretary of State for Children, Schools and Families under [Section 67](#) of the Education and Inspections Act 2006.
52. A motion to remove the chair or vice-chair must be an agenda item for a governing body meeting and the agenda must be circulated to governing body members at least seven days in advance of the meeting.

53. The governor(s) proposing the removal must state their reasons for doing so at the meeting. The chair or vice-chair must be given the opportunity to make a statement in response before he or she withdraws from the meeting and the governing body votes on the proposal to remove the chair or vice-chair from office.

### **ROLE OF THE CLERK**

54. The clerk needs to work effectively with the chair of governors, the other governors and the headteacher to support the governing body. The clerk should be able to advise the governing body on constitutional and procedural matters, duties and powers. The clerk is accountable to the governing body.

#### **Appointment of the clerk to the governing body**

55. The governing body must appoint a clerk to the governing body. Governors, associate members and the headteacher of the school cannot be appointed as clerk to the governing body.
56. If the clerk does not attend a meeting, the governors present at the meeting can appoint a member of the governing body (but not the headteacher) to act as clerk for that meeting.

#### **Functions of the clerk**

57. It is the responsibility of the clerk of the governing body to:
- convene meetings of the governing body;
  - attend meetings of the governing body and ensure minutes are taken;
  - maintain a register of members of the governing body and report vacancies to the governing body;
  - maintain a register of attendance and report this to the governing body;
  - give and receive notices in accordance with relevant regulations;
  - perform such other functions as may be determined by the governing body from time to time.

A full job description for governing body clerks is given in the [national training programme for clerks to governing bodies](#).

#### **Removal of the clerk**

58. The governing body can remove its clerk from office by resolution at a governing body meeting. If a school does not have a delegated budget, the LA may dismiss the clerk and appoint a substitute, but the authority must consult the governing body before doing so.

### **RIGHT TO ATTEND GOVERNING BODY MEETINGS**

59. Governors, associate members, the headteacher and the clerk have the right to attend governing body meetings. In addition, the governing body can allow any other person to attend its meetings. Associate members may be excluded from any part of a meeting when the item of business concerns an individual pupil or member of staff.

### **CONVENING GOVERNING BODY MEETINGS**

60. The governing body is best placed to decide how often and for how long it needs to meet in order to perform its functions effectively. However, each governing body must hold at least three meetings per school year. Many governing bodies meet more often and this is for the governing body to decide.
61. Meetings are convened by the clerk, who takes directions from the governing body and the chair. Any three members of the governing body can request a governing body meeting by giving written notice to the clerk that summarises the business to be conducted. The clerk must convene a meeting as soon as is practicable.
62. The clerk must give each governor, associate member and the headteacher (if not a governor) written notice of a meeting, a copy of the agenda and any papers to be

considered at the meeting at least seven days before the meeting. If the chair considers that there are matters that demand urgent consideration, he or she can determine a shorter period of notice, but the period of notice must be at least seven days if matters to be considered include the removal of the chair, the suspension of any governor, changing the school's name or a proposal to close the school.

### **QUORUM FOR GOVERNING BODY MEETINGS**

63. The quorum for any governing body meeting and vote must be one half (rounded up to a whole number) of the complete membership of the governing body, excluding vacancies. For example, if the full membership is 15 and there are three vacancies, then the quorum for a governing body meeting is six governors (one half of 12).

### **VOTING**

64. Every question to be decided at a governing body meeting must be determined by a majority of votes of those governors present and voting. If there are an equal number of votes, the chair (or the person acting as chair provided that they are a governor) has a second, or casting vote. A unanimous vote in favour of the proposal of the full membership of the governing body is required to change the name of a school. If a governor is unable to be present at the meeting where a vote to change a school name is to be taken the governor can vote by proxy. The proxy must be a governor or associate member whose appointment as a proxy is in writing and signed by the governor unable to attend. This is the only occasion where a proxy vote can be accepted.
65. Any decision to close the school will not have effect unless it is confirmed by a governing body meeting held not less than 28 days after the meeting at which the decision was made. The item has to be an agenda item and seven days' notice has to be given.

### **MINUTES AND PAPERS**

66. The clerk must ensure that minutes are drawn up, approved by the governing body and are signed by the chair at the next meeting.
67. Regulation 13 of the Procedures Regulations provides that the governing body must make available for inspection, to any interested person, a copy of the agenda, signed minutes and reports or papers considered at the meeting as soon as is reasonably practical. Information relating to a named person or any other matter that the governing body considers confidential does not have to be made available for inspection. Since January 2005, the governing body is obliged to make this information available upon request under the [Freedom of Information Act 2000](#), unless any other of the specific exemptions in that Act apply. Therefore, the governing body will only be able to withhold information that constitutes personal data or confidential information, in each case, within the meaning of the Freedom of Information Act (see [guidance](#) available on GovernorNet).

### **RESTRICTIONS ON PERSONS TAKING PART IN PROCEEDINGS OF GOVERNING BODY MEETINGS AND COMMITTEES**

68. The general principles are shown below.
- Where there is a conflict between the interests of any person and the interests of the governing body that person should withdraw from the meeting and should not vote.
  - In a situation where the principles of natural justice require a fair hearing, and there is any reasonable doubt as to a person's ability to act impartially, he or she should also withdraw from the meeting and not vote.
  - Where a governor or associate member has a pecuniary interest in any matter he or she should also withdraw from the meeting and not vote.
  - Examples of cases where a fair hearing must be given include decisions relating to staff or pupil discipline or admission of pupils. The restrictions on persons taking

part in proceedings do not stop a governing body or committee from allowing someone who can offer relevant evidence to a case from giving that evidence.

- If there is any dispute as to whether or not a person must withdraw from a meeting the other governors present at the meeting must decide on this.

More specific provisions relating to restrictions on taking part in proceedings are set out in the Schedule to the Procedures Regulations.

### SUSPENSION OF GOVERNORS

69. In certain prescribed circumstances the governing body can decide to suspend a governor for a period of up to six months. The governing body can only suspend a governor if one or more of the following grounds apply.
- The governor is paid to work at the school and is the subject of disciplinary proceedings in relation to his or her employment.
  - The governor is the subject of any court or tribunal proceedings, the outcome of which may be that he or she is disqualified from continuing to hold office as a governor under [Schedule 6 of the Constitution Regulations](#).
  - The governor has acted in a way that is inconsistent with the school's ethos or religious character and has brought, or is likely to bring, the school, the governing body or his or her office of governor into disrepute.
  - The governor is in breach of his or her duty of confidentiality to the school, the staff or to the pupils.
70. A governing body can vote to suspend a governor on any of the above grounds but does not have to do so. The governing body should only use suspension as a last resort after seeking to resolve any difficulties or disputes in more constructive ways.
71. Any motion to suspend must be specified as an agenda item of a meeting for which at least seven days' notice must be given. Before the governing body votes to suspend a governor, the governor proposing the suspension must give the reasons for doing so. The governor who is proposed for suspension must be given the opportunity to make a statement in response before withdrawing from the meeting and a vote then takes place.
72. A governor who has been suspended must be given notice of any meetings and must be sent agendas, reports and papers for any meetings during his or her suspension.
73. A governor who has been suspended cannot be disqualified from holding office for failure to attend meetings under Paragraph 5 of [Schedule 6 of the Constitution Regulations](#).

### DELEGATION OF FUNCTIONS

74. A governing body can delegate any of its statutory functions to a committee, a governor or the headteacher, subject to prescribed restrictions. The governing body must review the delegation of functions annually. Each governing body will remain accountable for any decisions taken including those relating to functions delegated to a committee or individual.
75. Functions that can be delegated to a committee but cannot be delegated to an individual include those that relate to:
- the alteration, discontinuance or change of category of maintained schools;
  - the approval of the first formal budget plan of the financial year;
  - school discipline policies;
  - the exclusion of pupils (except in an emergency when the chair has the power to exercise these functions);
  - admissions.
76. The governing body cannot delegate any functions relating to:
- the constitution of the governing body (unless otherwise provided by the [Constitution Regulations](#));

- the appointment or removal of the chair and vice-chair;
- the appointment of the clerk;
- the suspension of governors;
- the delegation of functions;
- the establishment of committees.

77. Any individual or committee to whom a decision has been delegated must report to the governing body in respect of any action taken or decision made. The governing body can still perform functions it has delegated: this enables the governing body to take decisions on matters that are discussed at meetings on functions that have been delegated. For instance, the governing body can decide to move (“vire”) money from one budget heading to another in light of changing circumstances, even if the function of approving and monitoring the budget has been delegated to a committee.

## **COMMITTEES OF GOVERNING BODIES**

### **Application of this part of the regulations to staffing functions**

78. This section does not apply to committees established by the governing body to deal with most staffing functions that affect individual members of staff, rather than the school staff as a whole. The delegation by a governing body of its functions relating to the appointment and dismissal of staff, staff grievance, capability, conduct, discipline and suspension matters is covered in chapter 10 of this Guide, Staffing.

### **Establishment of committees**

79. The governing body must determine the membership and proceedings of any committee. The governing body must also review the establishment, terms of reference, constitution and membership of any committee annually. The membership of any committee may include associate members, provided that a majority of members of the committee are governors. Each committee must have a chair, who is either appointed by the governing body or elected by the committee. The governing body may remove the chair of a committee from office at any time.

### **Appointment and removal of the clerk to committees**

80. The governing body must appoint a clerk to each committee. “Committee” in the Procedures Regulations means a committee with delegated functions. It does not include other groups, such as working groups set up for a specific purpose.

81. The headteacher of the school cannot be appointed as clerk to a committee. The governing body can appoint a governor to clerk one or more committees.

82. If the clerk does not attend a committee meeting, the governors present at the meeting can appoint a member of the committee (but not the headteacher) to act as clerk for that meeting.

83. The governing body can remove a clerk to a committee from office at any time.

### **Functions of the clerk**

84. It is the responsibility of the clerk to a committee to:

- convene meetings of the committee;
- attend meetings of the committee and ensure minutes are taken;
- perform such other functions with respect to the committee as may be determined by the governing body from time to time.

A full job description for governing body clerks is given in the [national training programme for clerks to governing bodies](#).

### **Right of persons to attend meetings of committees**

85. Members of committees, the headteacher (if not a member of the committee) and the clerk to the committee have the right to attend committee meetings. In addition, the governing body or the committee can allow any other person to attend their meetings. Associate members may be excluded from any part of a committee meeting when the item of business concerns an individual pupil or member of staff.

### **Meetings of committees**

86. Committee meetings are convened by the clerk to the committee, who takes directions from the governing body and the chair of the committee.

### **Notice of committee meetings**

87. The clerk must give each governor and associate member who is a member of the committee and the headteacher (if not a governor) written notice of a meeting, a copy of the agenda and any papers to be considered at the meeting at least seven days before the meeting. If the chair of the committee considers that there are matters that demand urgent consideration he or she can determine a shorter period of notice.

### **Quorum**

88. The quorum for any committee meeting and for any vote must be three governors who are members of the committee (or more) as determined by the committee.

### **Voting**

89. Every question to be decided at a committee meeting must be determined by a majority of votes of those governors and associate members present and voting. If there is an equal number of votes, the chair (or the person acting as chair), provided that he or she is a governor, has a second (or casting) vote. The committee can only vote if the majority of the committee members present are governors.

### **Associate members**

90. The governing body can give limited voting rights to associate members on committees at the time of appointment. Associate members cannot be given voting rights if they have not reached the age of 18 at the time of their appointment.
91. Associate members may not vote on any decision concerning admissions, pupil discipline, election or appointment of governors, the budget and financial commitments of the governing body.

### **Minutes of committee meetings**

92. Minutes must be drawn up by the clerk and signed by the chair after approval at the next meeting of the committee. The committee must make available for inspection to any interested person a copy of the agenda, signed minutes and reports or papers considered at the meeting as soon as is reasonably practicable. Information relating to a named person or any other matter that the committee considers confidential does not have to be made available for inspection.

## **THE LAW**

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 1996: Sections 2, 4, 5, 496 and 497



School Standards and Framework Act 1998: Section 48 (as amended by the Education Act 2002), Education Act 2002, in particular Sections 19, 21, 23, 29, 30, 32, 33, 35 and 78–80 and Schedules 1 and 3

The Education and Inspections Act 2006, in particular Section 67 and Part 4

The School Governance (Constitution) (England) Regulations 2007: SI 2007/957

The Education (School Performance Targets) (England) Regulations 2004: SI 2004/2858 (as amended by The Education (School Performance Targets) (England) (Amendment) Regulations 2006: SI 2006/3151)

The Education (School Government) (Terms of Reference) (England) Regulations 2000: SI 2000/2122

The School Staffing (England) Regulations 2003: SI 2003/1963 (as amended by SI 2003/2725 and SI 2006/3197)

The School Governance (Procedures) (England) Regulations 2003: SI 2003/1377 (as amended by SI 2003/1916, 2003/1963, 2004/450 and 2007/959)

The Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000). The specific duties of governing bodies are set out in SI 2001/3458 and SI 2004/3125

The Race Relations Act 1976 (Amendment) Regulations 2003: SI 2003/1626 implements the Race Directive 2000/43EC

## **GUIDANCE**

[www.standards.dfes.gov.uk/lea/role](http://www.standards.dfes.gov.uk/lea/role)

DfEE Circular 11/98, Target-setting in Schools on the [DCSF target-setting website](#)

[Supporting the Target Setting Process: Guidance for Effective Target Setting for Pupils with Special Educational Needs \(DfEE 0065/2001\)](#)

Guidance for Local Authorities on target setting at Key Stages 2, 3 and 4, and for minority ethnic groups, looked-after children and school attendance on the [DCSF target-setting website](#)

Code of Practice: LEA–School Relations, DfEE publication (ISBN 1 84185 008 X)

FEFC Circular 96/06: Franchising

FEFC Circular 99/37: Indirectly Funded Partnerships

FEFC Circular 99/37: Supplement

[Roles of Governing Bodies and Headteachers](#), DfEE Guidance, issued September 2000

[School complaints procedure](#) located in the roles and responsibilities area of the [GovernorNet website](#)

[The Innovation Unit website](#)

Extended Schools: providing opportunities and services for all, on the [TeacherNet website](#)

### **On promoting race equality:**

[Statutory Code of Practice on the Duty to Promote Race Equality](#), the Commission for Racial Equality (2002) (ISBN 1 85442 430 0)

[The Duty To Promote Race Equality: A Guide for Schools](#) (non-statutory), the Commission for Racial Equality (2002) (ISBN 1 85442 433 5)

[Learning for All: Standards for Racial Equality in Schools](#), the Commission for Racial Equality (2000) (ISBN 1 85442 223 5)

(This document is a priced publication which can be ordered from the [Stationery Office](#))

### 3. GOVERNING BODY POWERS, DUTIES AND PROCEDURES

[Schools' Race Equality Policies: From Issues to Outcomes, DfES guidance \(2005\)](#)

[Schools causing concern, on the Standards Site](#)

[Working Together: Giving Children and Young People a Say \(DfES 0134/2004\)](#)

# 4 SUPPORT AND TRAINING FOR GOVERNORS

## CHAPTER SUMMARY

This chapter gives details of the Department for Children, Schools and Families (DCSF) National Strategy for Governor Support and Training, the Local Authority's (LA's) responsibility to provide training for governors and how it is funded. Information on governors' entitlements when taking time off work for governance duties and payment of allowances for expenses is also provided.

### TRAINING

1. The LA provides a portfolio of training courses that governors can access to help them carry out their duties effectively. The training must be provided free of charge to the individual governor. Most LAs provide governor and clerk training to schools under a package for which the governing body pays a subscription. Several other organisations also provide training for governors and clerks.
2. The school's delegated budget is the primary source of funding for governor training and clerking. Governing bodies are responsible for approving the school budget and within that they should make provision for meeting their own training and clerking needs.
3. In addition to training for governors, the school's delegated budget also covers measures taken to improve standards that are identified in a school's development plan (which may be known as the improvement or strategic plan) or included in an LAs Children and Young People's Plan, such as:
  - training for school senior management, teachers, classroom assistants, support staff and administrative staff;
  - the purchase of books and other materials to support the effective delivery of the curriculum;
  - the school's contribution to continuing development of LA-wide arrangements to provide comparative information to schools to support benchmarking and target-setting.
4. Training for all governors and clerks is to be encouraged. Although not compulsory, it is strongly recommended and all governors, however experienced, need training to improve their effectiveness and to keep abreast of developments that may affect their schools and roles as governors. New governors should take advantage of induction training. It will benefit schools if governing bodies use the funds they allocate for governor training and development. There is a wide range of training and support available for governors and each governing body should consider what its needs are and how training can help it to meet those needs.

### THE NATIONAL STRATEGY FOR GOVERNOR SUPPORT AND TRAINING

5. The National Strategy consists of three strands.

#### i) The National Training Programme for New Governors

This training programme for new governors aims to ensure that they can access consistent information about their role, responsibilities and the expectations of them. The programme's purpose is to enable new governors to contribute as effectively and quickly as possible in supporting their schools to raise standards of educational achievement. LAs may deliver the programme as part of their induction. The programme can be undertaken independently by completing the distance-learning version of the programme.

#### ii) The National Training Programme for Clerks to Governing Bodies

This programme enables new clerks to develop the competences necessary to provide a clerking service that matches the agreed model national job description and person

specification. It also enables experienced clerks to refresh, consolidate and further develop their competences. There is a distance-learning version of this training programme, which allows the programme to be undertaken independently.

### iii) The National Development Programme for Chairs of Governing Bodies and Headteachers

The National Development Programme for Chairs of Governing Bodies and Headteachers was introduced to meet the demand for more support for chairs of governing bodies and to encourage them to work together proactively with headteachers, while respecting each other's roles and responsibilities. It consists of two separate programmes.

- a) "Taking the Chair" is intended for chairs, aspiring chairs and chairs to committees of the governing body. It is designed to impart the required skills for the role of chair to a governing body. This programme, which can be completed by distance learning, will also help chairs understand their working relationship with the headteacher.
- b) "Leading Together" is a facilitator-led programme that aims to bring chairs and the governing body together with headteachers and other members of the school leadership team. It is designed to help them work on specific activities to support aspects of the school's strategic development, and to lead, develop and work together as an effective team.

Copies of training material from all the training programmes from the National Strategy can be obtained by emailing [governor.materials@dcsf.gsi.gov.uk](mailto:governor.materials@dcsf.gsi.gov.uk). You can also access all the training programmes in the training and recruitment section of the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)

### TIME OFF FROM WORK

6. Under [Section 50 of the Employment Rights Act 1996](#) employers must give employees who are school governors reasonable time off to carry out their duties. The employee and employer have to agree on what is reasonable time off. Among the points they should discuss are:
  - how much time is required overall to perform the duties;
  - whether the employee is also being given time off from work for other activities;
  - the particular circumstances of the employer's business;
  - the likely effect that the employee's absence may have on it.

### PAYMENT FOR TIME OFF

7. Employers may give time off with pay but do not have to do so. This is for discussion between the employee and the employer. For further information see the guidance for time off for public duties on the [Department for Business, Enterprise and Regulatory Reform](#) website.

### SETTLING DISAGREEMENTS

8. If the employee and employer cannot agree on any of these questions, either of them can ask for help from the [Advisory Conciliation and Arbitration Service \(ACAS\)](#), which will try to settle any differences informally. An employee who is still not satisfied may complain to an Employment Tribunal.

### ALLOWANCES FOR EXPENSES

9. Governing bodies that have a delegated budget can choose whether or not to pay allowances to governors and associate members of the governing body. The DCSF considers it good practice for governing bodies to pay allowances, as governors should not be out of pocket for the valuable work they do. Where governing bodies choose to do

so, it must be in accordance with a policy or scheme. The scheme may, for example, include reimbursing governors for expenditure they have incurred in connection with their governance duties for:

- care arrangements for a dependent relative (including childcare or baby sitting);
  - telephone charges, photocopying and stationery;
  - travel and subsistence (i.e. reimbursement for meals purchased that would not have otherwise been bought).
10. The list in paragraph 9 is not an exhaustive list of possible allowances. Payments can only be paid in respect of expenditure necessarily incurred for the purposes of enabling the person to perform any duty as a governor. This would not include payments to cover loss of earnings for attending meetings.
11. Travel expenses must be paid at a rate not exceeding the maximum level of HM Revenue & Customs authorised mileage rate. The rates are changed annually and can be found on HM Revenue & Customs website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk). Governing bodies may pay less than the authorised mileage rate if they wish, but they may not pay more than the maximum level of those rates. If a governing body has any doubt about whether or not payments made under its scheme attract a tax liability, it should contact HM Revenue & Customs for advice. Other expenses should be paid on the provision of a receipt (at a rate predetermined by the governing body and set out in its scheme) and should be limited to the amount shown on the receipt.
12. Governing bodies should make provision from within their delegated budget if they anticipate expenditure in making adjustments for disabled governors or in providing support to those governors whose first language is not English.
13. Where a governing body does not have a delegated budget, the allowances referred to in paragraph 9 may be paid for by the LA at a rate determined by them.

#### FURTHER INFORMATION

14. Information about the training and support available to governors can be obtained from LA Co-ordinators of Governor Services and from the following organisations.

Catholic Education Service  
39 Eccleston Square  
London SW1V 1BX  
Tel: 020 7901 4880  
Email: [general@cesew.org.uk](mailto:general@cesew.org.uk)  
[www.cesew.org.uk](http://www.cesew.org.uk)

Church of England Board of Education  
Church House  
Great Smith Street  
London SW1P 3NZ  
Tel: 020 7898 1500  
[www.natsoc.org.uk](http://www.natsoc.org.uk)

Information for School and College  
Governors (ISCG)  
Avondale School  
Sirdar Road  
London W11 4EE  
Tel: 020 7229 0200  
Email: [iscg@governors.fsnet.co.uk](mailto:iscg@governors.fsnet.co.uk)  
[www.governors.uk.com](http://www.governors.uk.com)

National Governors' Association  
2nd Floor SBQ 1  
29 Smallbrook Queensway  
Birmingham B5 4HG  
Tel: 0121 643 5787  
Email: [governorhq@nga.org.uk](mailto:governorhq@nga.org.uk)  
[www.nga.org.uk](http://www.nga.org.uk)

GovernorLine is a free professional and confidential helpline offering email and telephone support to school governors, clerks and individuals involved directly in school governance in England. GovernorLine is available Monday to Friday from 9a.m. to 10p.m. (excluding public holidays) and from 11a.m. to 4p.m. at weekends. Telephone 08000 722181 or email via their website at [www.governorline.info](http://www.governorline.info)

## USEFUL RESOURCES FOR FURTHER INFORMATION

DCSF School Governance Unit  
3<sup>rd</sup> Floor  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT  
Tel: 020 7925 5728

DCSF School Governance Unit  
Mowden Hall  
Staindrop Road  
Darlington DL3 9BG  
Tel: 01325 391288

DCSF Publications Centre  
Tel: 0845 602 2260

Ofsted  
Tel: 020 7421 6800  
[www.ofsted.gov.uk](http://www.ofsted.gov.uk)

DCSF School Governors' website, GovernorNet, at [www.governornet.co.uk](http://www.governornet.co.uk)

Your Local Authority or Diocesan Governor Support Services Department

Office for Public Sector Information (OPSI), incorporating Her Majesty's Stationery Office (HMSO) – [www.opsi.gov.uk](http://www.opsi.gov.uk)

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

Education Act 1996: Section 519 (allowances for governors of schools and further or higher education institutions)

Education Act 2002: Sections 19(3) and 22

# 5 GOVERNING BODY FEDERATION AND COLLABORATION

## CHAPTER SUMMARY

This chapter outlines the conditions and processes allowing maintained schools to federate under one governing body (federation), or for maintained schools to adopt collaborative arrangements with other maintained schools and further education institutions, including joint meetings of governing bodies and joint committees (collaboration).

More recently, a federation model has been adopted as a structural solution for National Challenge schools in order to help them strengthen their leadership and governance and to improve educational standards. Find out more from the [DCSF website](#).

### GOVERNING BODY FEDERATION

1. Under Sections 24 and 25 of the Education Act 2002 (“the Act”), maintained schools are able to federate under one governing body. The conditions and procedures for schools to federate under the Act are set out in the [School Governance \(Federations\) \(England\) Regulations 2007](#) (“Federation Regulations”).

N.B. References to federations in this chapter are to federated governing bodies (i.e. federated in accordance with the Federation Regulations) unless otherwise specified.

2. The Regulations provide that a federation should contain at least two schools.
3. More informal collaborative arrangements between maintained schools and non-maintained schools (such as City Technology Colleges, Academies and independent schools) and Further Education Colleges are also possible, but these may not include federation of the governing bodies. Maintained schools can form formal joint committees of the governing bodies under the Act with Further Education Colleges, but cannot form such committees with non-maintained schools (such as City Technology Colleges, Academies and independent schools). More detailed guidance on the Regulations is available at [GovernorNet](#) and on more informal federations at the [DCSF Standards website](#).

### Procedure for governing bodies wishing to federate

4. In order to form a federation with one or more other schools, or join an existing federation, the governing body must first consider a report on the proposal. The report must be specified as an item of business on the agenda for the meeting of which notice has been given in accordance with [Regulation 11\(4\) of the School Governance \(Procedures\) \(England\) Regulations 2003](#).
5. Where the governing body proposes that its school should join an existing federation, it must give notice of the proposal to the governing body of that federation. Upon receipt of the notice, the governing body of the federation must consider whether it should give preliminary consent to the school joining the federation or determine that the school should not join the federation.
6. Where the governing body decides that its school should federate with one or more other schools or join a federation and, where necessary, preliminary consent has been given, it must jointly publish proposals for federation with the other governing body or bodies.
7. The proposals must contain:
  - the name or names of the governing body or bodies with which the governing body proposes to federate, and confirmation that that governing body, or those governing bodies, have resolved likewise to seek federation;

- the proposed size of the governing body of the federation (paragraphs 31–38);
  - the proposed numbers for each category of governor (paragraphs 31–38);
  - the proposed arrangements for staffing the schools within the federation;
  - the proposed federation date;
  - the identity of the admission authority/ies for the schools within the federation;
  - the date, not less than six weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent;
  - such other matters as the governing body considers appropriate.
8. The governing bodies proposing to federate must publish the proposals by sending them to:
- the relevant Local Authority (LA) (or LAs if the schools are in more than one authority);
  - the headteacher of each school;
  - all staff paid to work at any of the schools;
  - the parents of registered pupils at any of the schools;
  - such other persons as the governing bodies consider appropriate; and
  - the Secretary of State within one week of publication via [federations.mailbox@dcsf.gsi.gov.uk](mailto:federations.mailbox@dcsf.gsi.gov.uk) (this requirement is being introduced in The School Organisation and Governance (Amendment ) (England) Regulations 2009).

N.B. In the case of a school with a foundation, proposals must also be sent to the foundation governors and any trustees of the school. In the case of a school designated as having a religious character under [Section 69\(3\) of the School Standards and Framework Act 1998](#), proposals must also be sent to the appropriate diocesan authority in the case of a Church of England or Roman Catholic school, or the appropriate religious body in the case of all other such schools.

A copy of the proposals must be made available for inspection at all reasonable times at each school.

9. The governing bodies proposing to federate must jointly consider any responses to the proposals, and each governing body must determine either:
- to proceed with the proposals for federation as published;
  - to proceed with the proposals for federation with such modifications as the governing body considers appropriate (but such modifications may not include a change in the schools proposing to federate); or
  - not to proceed with the proposals for federation.
10. All the governing bodies must notify the Secretary of State of their decision on the proposals via [federations.mailbox@dcsf.gsi.gov.uk](mailto:federations.mailbox@dcsf.gsi.gov.uk) (this requirement is being introduced in The School Organisation and Governance (Amendment ) (England) Regulations 2009). In addition, all the governing bodies that have determined to proceed must jointly give notice of that fact to the relevant LA or LAs.

### **New schools wishing to federate**

11. Where it is proposed that a school will form part of a federation when it opens, this should be made clear in the consultation on the statutory proposals for the new school under Sections 7, 10, or 11 of the [Education and Inspections Act 2006](#). Those bringing forward the proposals (i.e. the LA or the proposers) must ensure that the consultation contains all the elements specified in paragraphs 4–10, above.
12. If a proposal to federate did not form part of the consultation on the statutory proposals, but it is proposed that a new school should become part of a federation and a temporary governing body has not yet been established, the procedure set out in paragraphs 4–10 must be carried out by those bringing forward the proposals.
13. If a temporary governing body has been established for the school, it is for the temporary



governing body to carry out the procedures in paragraphs 4–10.

14. If two or more new schools are to federate together, with or without any other schools or federations, the LA may establish a single temporary governing body for the new schools. Such a temporary governing body must be constituted in accordance with [Schedule 1 to the 2007 Federation Regulations](#). Where one or more of the new schools is to be a foundation or voluntary school, the LA must consult the proposers about whether or not it should establish such a temporary governing body, and if so, on what date.

### **Incorporation of governing bodies of federations and dissolution of former governing bodies**

15. On the federation date:
- the governing bodies of the schools that become federated schools are dissolved;
  - the governing body of the federation is incorporated;
  - all land and property, which immediately before the federation date was property held by the governing body of a federating school or federation, is transferred to and vests in the governing body of the federation;
  - all rights and liabilities subsisting immediately before the federation date, that were acquired or incurred by the governing body of a federating school or federation, are transferred to the governing body of the federation.

### **CATEGORIES OF GOVERNORS ON FEDERATED GOVERNING BODIES**

16. The criteria for election or appointment to the categories of governors on federated governing bodies are broadly the same as those for governing bodies, outlined in the [School Governance \(Constitution\) \(England\) Regulations 2007](#). Unless otherwise specified in paragraphs 17–30, all references to “school” in chapter 2 of this Guide (Constitution of governing bodies) should be read as “school within the federation”.

#### **Parent governors**

17. The criteria for eligibility to stand for election as a parent governor on the federated governing body are as for a parent governor on a governing body, outlined in chapter 2 of this Guide (Constitution of governing bodies), except for paragraph 18, below.
18. If insufficient parents stand for election, the governing body may appoint the following in the order below, to represent the school:
- a parent of a pupil at the school;
  - a parent of a pupil from another school within the federation;
  - a parent of a former pupil at the school;
  - a parent of a former pupil from another school within the federation;
  - a parent of a child.

#### **Staff governors**

19. The criteria for eligibility and election as a staff governor are outlined in paragraphs 9–12 of chapter 2 of this Guide (Constitution of governing bodies), except for paragraph 20, below. In these paragraphs, references to “the school” in this chapter should be read as “the federation”.
20. The headteacher of a federation or a federated school (unless he or she resigns as a governor in accordance with [Regulation 23\(1\) of the School Governance \(Constitution\) \(England\) Regulations 2007](#)) is an ex officio member of the federated governing body.

#### **Local Education Authority (LEA) governors**

21. LAs can appoint any eligible person as an LEA governor. A person eligible to be a staff governor is disqualified from appointment as an LEA governor.
22. If a federation includes schools that are maintained by more than one LA, the LAs must

agree among themselves who shall appoint the LEA governors, and in what proportion.

### **Community governors**

23. The definition of community governors is outlined in paragraphs 14–16 of chapter 2 of this Guide (Constitution of governing bodies). This is a wide definition and people from a business or professional background and minor authority representatives may be appointed as community governors.

### **Foundation governors**

24. Where a federation includes a foundation or voluntary school, its governing body will include foundation governors. The definition of a foundation governor is outlined in paragraphs 17–19 of chapter 2 of this Guide (Constitution of governing bodies).  
References to “the school” in this chapter should be read as “the federated school”.

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### **Partnership governors**

25. Where the federation includes a foundation school which has no foundation, the governing body of the federation must include partnership governors. Partnership governors take the place of foundation governors in foundation schools that have no foundation.
26. The governing body must seek nominations for partnership governors from parents of registered pupils at schools with no foundation in the federation. It may also seek nominations from parents of registered pupils at other schools in the federation, and from such other persons in the community served by the federation as it considers appropriate.
27. Partnership governors must meet the same eligibility criteria as community governors and, in addition, may not be the parent of a registered pupil at a school within the federation, or employed by a relevant authority in connection with its functions as an LA.
28. If the number of eligible nominees is fewer than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body of the federation.

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### **Sponsor governors**

29. Sponsor governors are appointed by the governing body, whose discretion it is whether or not to choose to appoint sponsor governors. The governing body of a federation may appoint up to two (or where the federation contains secondary schools only, up to four) sponsor governors. The definition of sponsor governors is outlined in paragraphs 20–21 of chapter 2 of this Guide (Constitution of governing bodies).

### **Associate members**

30. Associate members are appointed as members of any committees established by the governing body of a federation. Paragraphs 22–23 of chapter 2 of this Guide (Constitution of governing bodies) explain the roles and terms of office of associate members.

## **COMPOSITION OF THE GOVERNING BODY: GENERAL PRINCIPLES**

31. The number of governors must be no fewer than nine and no more than 29, excluding sponsor governors or additional foundation governors, as per paragraph 36.
32. Where the number of governors in any category arrived at in accordance with the following proportions is not a whole number, the instrument may specify either the next whole number above or the next whole number below, provided that the total number of governors does not exceed the limits mentioned in paragraph 31.
33. In calculating the number of staff governors required, the headteacher governors must be included whether or not the headteacher of the federation (if there is one), or any headteacher of a federated school, has chosen not to act as a governor.

### **Federations comprising only one category of school**

34. The governing body of a federation containing only one category of school must consist of the same proportion of categories of governor, as laid down in paragraph 24 of chapter 2 of this Guide (Constitution of governing bodies).
35. When calculating the number of parent governors, the governing body must ensure that for each federated school at least one parent governor is elected by the parents of registered pupils at that school, or appointed by the governing body of a federation to represent the interests of such parents.
36. Where the federation comprises voluntary aided schools or qualifying foundation schools only, and the governing body appoints sponsor governors, then notwithstanding the overall limit of the number of governors, the persons who are entitled to appoint foundation governors may appoint such a number of additional foundation governors (up to two, or where the federation contains secondary schools only, up to four), as is required to preserve their majority.

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### **FEDERATIONS COMPRISING MORE THAN ONE CATEGORY OF SCHOOL**

#### **Federations comprising voluntary controlled schools and community, community special or maintained nursery schools**

37. The governing body of a federation containing at least one voluntary controlled school and at least one community school, community special or maintained nursery school, must consist of:
- one-third or more parent governors, provided that for each federated school at least one parent governor is elected by the parents at that school, or appointed by the governing body of a federation, to represent the interests of such parents;
  - at least two, but no more than one-third staff governors;
  - at least two, but no more than one-fifth LEA governors;
  - at least two community governors;
  - at least one foundation governor.

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The governing body of a federation may, in addition, appoint up to two sponsor governors or, where the federation contains secondary schools only, up to four sponsors.

#### **Federations comprising more than one category of school, including at least one foundation or foundation special or voluntary aided school**

38. The governing body of a federation that includes more than one category of school, but at least one foundation or foundation special or voluntary aided school, must consist of:
- at least one parent governor elected by the parents of registered pupils at that school, or appointed by the governing body of a federation, to represent the interests of such parents for each federated school;
  - at least two, but no more than one-third staff governors;
  - at least two, but no more than one-fifth LEA governors;
  - at least two community governors;
  - at least two foundation governors (or partnership governors for schools without a foundation).

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The governing body of a federation may also appoint one or two sponsor governors or, where the federation contains secondary schools only, up to four sponsors.

#### **Qualifications and disqualifications, terms of office and instruments of government**

39. Qualifications and disqualifications, terms of office and instruments of government are broadly as for other governing bodies, and Regulations 19 and 21 to 33 of, and Schedule 6 to the [School Governance \(Constitution\) \(England\) Regulations 2007](#) apply, with some modifications set out in Schedule 7 to the [School Governance \(Federation\) \(England\)](#)

Regulations 2007.

40. The instrument of government is the document that records the name of the federation and the constitution of its governing body.
41. The instrument must set out:
- the name of the federation;
  - the names and categories of the schools within the federation;
  - the name of the governing body of the federation;
  - the categories of governor;
  - the number of governors in each category;
  - the total number of governors, including any sponsor governors;
  - the terms of office of any category of governor, if less than four years;
  - the name of the nominating person or body where the federation has sponsor governors;
  - the date the instrument takes effect.
42. The instrument must also record:
- the name of the foundation body or person (if any) who is entitled to appoint foundation governors and, if there is more than one, the basis upon which appointments are made in the case of a federation involving one or more foundation or voluntary schools;
  - details of any foundation governorship to be held ex officio;
  - the name of the person entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;
  - the fact that there is a Trust relating to the school, if any;
  - a description of the ethos of the school if a school has a religious character.
43. For a federation involving one or more community special school(s) or foundation special school(s), the instrument must also record the name of the body that has the right to nominate a person for appointment as a community governor.
44. The governing bodies of the schools that are to federate jointly prepare the draft instrument of government and submit it to the LA. Where the federation will have foundation governors, the draft must first be approved in respect of each foundation or voluntary school by the foundation governors and, where relevant, any trustees or appropriate religious body. If the draft instrument complies with the legal requirements, the LA or LAs will make the instrument. (Where the federation is to include schools maintained by different LAs, the governing bodies of the schools need to agree between them which one of those LAs should make the instrument of government for the federation.) The governing body of the federation and LA or LAs can review and change the instrument at any time.
45. Where there is disagreement about the draft instrument and the federation includes one or more foundation or voluntary schools, a variation can be proposed by any party either solely or in conjunction with another, and all parties should seek to reach an agreement on the revised draft. Once agreement has been reached, the LA will make the instrument.
46. If the school does not have foundation governors and the LA is not content with the draft instrument, it must tell the governing body and explain why it is not content. The LA must give the governing body a reasonable opportunity to reach agreement with it on a revised draft. If no agreement can be reached, the LA will produce a final draft for the school as it thinks fit and make the instrument.

### Procedures of governing bodies of federations

47. The [School Governance \(Procedures\) \(England\) Regulations 2003](#) and associated guidance covering individual governing bodies apply to the proceedings of federated governing bodies, with amendments set out in Schedule 8 to the [School Governance \(Federations\) \(England\) Regulations 2007](#). These amendments mainly consist of

substituting “federation or a federated school” for “school”. A governor who is paid to work at the federation or a federated school is not eligible to be the chair or vice-chair of the governing body of the federation.

### Staffing of federations

48. The [School Staffing \(England\) Regulations 2003](#) apply to the staffing of governing bodies of federations, with amendments set out in Schedule 9 to the [School Governance \(Federation\) \(England\) Regulations 2007](#). The amendments substitute “federation or a federated school” for “school” and provide that both the governing body and the headteacher of the federation (if any) shall have the power to suspend any person employed to work at the federation. The headteacher of a federated school shall have the power to suspend any person employed to work at that federated school.

### Information for the governing body of a federation

49. Immediately before the federation date, the governing body of each school that will become a federated school must prepare, for the purpose of assisting the governing body of the federation, a brief report of the action which it has taken in the discharge of its functions relating to the school.
50. All minutes and papers of a governing body relating to a federated school, including the report prepared under paragraph 49, must be made available to the governing body of the federation.

### Financing of federations

51. Federated schools and their governing bodies are subject to the same provisions as individual schools and their governing bodies ([Chapter 4 of Part 2 of the School Standards and Framework Act 1998](#)). References to “maintained” schools become references to “federated” schools, and “governing body” becomes “governing body of a federation”, and so on. The governing body of the federation will continue to receive individual delegated budgets for each of the federated schools. It will be able to use these across the schools in the federation, but will need to maintain mechanisms to provide an audit trail for each school budget. Once a federation is formed, a modified [Section 50](#) of the 1998 Act applies to ensure that the governing bodies of federations:
- receive the budget shares of all the schools in the federation;
  - have the same powers as individual governing bodies to spend both the schools’ budget shares and any carried-over amount (which may include a deficit).

### PROCEDURES FOR A SCHOOL TO LEAVE A FEDERATION

52. In order for a school to leave a federation the following procedure must be followed. The request must be signed by one of the parties listed below:
- two or more governors;
  - one-fifth of the parents of registered pupils at the federated school;
  - two-fifths of staff who are paid to work at the federated school;
  - the LA;
  - the trustees of the federated school;
  - a body entitled to appoint foundation governors onto the governing body of a federation.
53. The governing body of the federation must give notice of the request to:
- all relevant LAs;
  - the headteacher of the federation and each headteacher of a federated school;
  - the foundation governors, any trustees under a Trust deed relating to the federated school and, in the case of a Church of England or Roman Catholic school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools where the federated school in respect of which the

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request has been made is a foundation or voluntary school with a religious character;

- all staff paid to work and the parents of all registered pupils at the federated school in respect of which the request has been made;
- such other persons as the governing body of a federation considers appropriate.

54. The notice referred to in paragraph 53 must be given within the period of five days, beginning with the date on which the request was received.
55. A request shall be taken to have been received by a governing body of a federation if given or sent to the chair or to the clerk to the governing body of that federation.
56. Not fewer than 14 days after the governing body of a federation has given notice of the request, the governing body must consider the request and all responses received from the persons to whom notification of the request was sent, and must decide whether:
- the federated school should leave the federation and, if so, on what date the school should do so (this is known as the “de-federation date”);
  - the federation should be dissolved, and if so, on what date; or
  - the federated school should not leave the federation.
57. Such a decision does not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given, in accordance with [Regulation 11\(4\) of the School Governance \(Procedures\) \(England\) Regulations 2003](#).
58. The governing body of a federation must, so far as is practicable, give notice in writing of its decision under paragraph 56 within five days to the persons named under paragraph 53.

#### **Decision to permit a federated school to leave a federation**

59. Where a governing body of a federation has resolved that a federated school should leave the federation and there are two or more schools remaining in the federation, upon notification of the decision, the LA must:
- establish a temporary governing body in respect of the school leaving the federation in accordance with Parts 3 and 4 of the [School Governance \(New Schools\) \(England\) Regulations 2007](#);
  - issue a new instrument of government for that school in accordance with Part 5 of the [School Governance \(Constitution\) \(England\) Regulations 2007](#);
  - review the instrument of government of the federation in accordance with Regulation 32 of the [School Governance \(Constitution\) \(England\) Regulations 2007](#).
60. Where only two schools are federated and one school is to leave the federation, the federation is dissolved in accordance with Part 8 of the [School Governance \(Federations\) \(England\) Regulations 2007](#).

#### **Availability of amounts representing budget share on leaving a federation**

61. Subject to any provision made by or under a scheme made under [Section 48\(1\)](#) of the 1998 Act, the temporary governing body of a school leaving a federation may spend any sum made available by the authority (under [Section 50\(1\)](#) of the 1998 Act as modified by Regulation 36) to the governing body of the federation in respect of the school leaving the federation, as it thinks fit for any purposes of that school.

#### **Incorporation of governing body of a school leaving a federation**

62. On the de-federation date, the temporary governing body of the school leaving the federation is incorporated as the governing body of that school under the name given in the school’s instrument of government.

### Transfer of property on leaving a federation

63. On the de-federation date:
- all land or property that immediately before the de-federation date was property held by the governing body of the federation for the purposes of the de-federated school is transferred to and vests in the new governing body of the school which has left the federation;
  - all rights and liabilities subsisting immediately before the de-federation date that were acquired or incurred by the governing body of the federation for those purposes are transferred to the new governing body of the school which has left the federation.
64. [Section 198 of the Education Reform Act 1988](#) (which, with [Schedule 10](#) to that Act, makes further provision in relation to transfers of property, rights and liabilities) applies.

### DISSOLUTION OF FEDERATIONS

65. Where a governing body of a federation decides that the federation shall be dissolved or that one of only two federated schools shall leave a federation, the governing body of a federation must give notice of the fact and the date of dissolution to the persons mentioned below within 14 days.
66. The persons to be notified are:
- all relevant LAs;
  - the headteacher of the federation and each headteacher of a federated school;
  - every member of staff paid to work at the federation or a federated school;
  - the parents of every registered pupil at a federated school;
  - the foundation governors, any trustees under a Trust deed relating to the federated school, and in the case of a Church of England or Roman Catholic school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools where the federated school is a foundation or voluntary school with a religious character;
  - such other persons as the governing body of the federation considers appropriate.
67. Upon receipt of the notice, the LA or LAs must:
- establish a temporary governing body in respect of each school in accordance with Parts 3 and 4 of the [School Governance \(New Schools\) \(England\) Regulations 2007](#);
  - issue a new instrument of government for each school in accordance with Part 5 of the [School Governance \(Constitution\) \(England\) Regulations 2007](#).

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### Availability of amounts representing budget share on dissolution of a federation

68. Subject to any provision made by or under a scheme made under [Section 48\(1\)](#) of the School Standards and Framework Act 1998, the temporary governing body of each school may spend any sum made available by the authority (under [Section 50\(1\)](#) of the 1998 Act) to the governing body of the federation in respect of each school as it thinks fit for any purposes of that school.

### Incorporation of governing body of a school on dissolution of a federation

69. On the date of dissolution, the temporary governing body of each school previously federated is incorporated as the governing body of the school under the name given in the school's instrument of government.

### Transfer of property on dissolution of a federation

70. On the date of dissolution:
- all land or property that immediately before the date of dissolution was property held by the governing body of the federation for the purposes of each de-federated school is transferred to and vests in the new governing body of each school;
  - all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school are transferred to the new governing body of each school.
71. [Section 198 of the Education Reform Act 1988](#) will also apply to the division of property upon a school leaving a federation. This and [Schedule 10](#) to that Act make further provision in relation to transfers of property, rights and liabilities, and will need to be taken into account by the schools and federations involved.

### GOVERNING BODY COLLABORATION

72. Under [Section 26](#) of the Act, schools are able to have increased collaborative arrangements with other maintained schools, including joint meetings of governing bodies and joint committees. The [School Governance \(Collaboration\) \(England\) Regulations 2003](#): SI 2003/1962 came into force on 1 September 2003. All maintained schools are able to have increased collaborative arrangements with other maintained schools, including joint meetings of governing bodies and joint committees. More detailed guidance on the Regulations is available at [GovernorNet](#) and on more informal collaboration at the [DCSF Standards](#) website.

#### Collaboration between schools

73. Two or more governing bodies may arrange for any of their functions to be discharged jointly. They may also delegate any of their functions to a joint committee in the same way that they may delegate them to a committee of a single governing body. The criteria for joint committees are broadly the same as those for governing body committees, outlined in the [School Governance \(Procedures\) \(England\) Regulations 2003](#). Unless otherwise specified in paragraphs 77–83, below, all references to “committees” in paragraphs 76–90 of chapter 3 of this Guide (Governing body powers, duties and procedures) should be read as “joint committees”.
74. The [School Governance \(Procedures\) \(England\) Regulations 2003](#) apply to joint meetings of full governing bodies in the same way as they apply to meetings of individual governing bodies. Where governing bodies make arrangements to discharge their functions jointly in respect of any of their functions relating to individual members of the school staff, the [School Staffing \(England\) Regulations 2003](#) apply.
75. The selection of the headteacher or deputy headteacher may be delegated to a special selection panel taken from the governors of the collaborating schools and must be approved by the relevant governing body. Decisions relating to the dismissal of the headteacher may be delegated to one or more governors.
76. As the guidance on the [School Staffing \(England\) Regulations 2003](#) makes clear, most decisions on staff appointments are recommended to be delegated to the headteacher, as are the decisions on dismissal. However, these functions can be delegated to several combinations of headteachers and governors.

#### Establishment of joint committees

77. The governing bodies wishing to discharge their functions jointly must determine and review annually the constitution, membership and terms of reference of any joint committees they decide to establish. It is for a joint committee itself to decide the quorum for any of its meetings, but it cannot consist of fewer than three persons, each of whom is a governor of any of the collaborating bodies. A joint committee will appoint a chair



annually and may remove its chair from office at any time.

### **Clerks to joint committees**

78. A joint committee must appoint a clerk (who cannot be one of the headteachers) and may remove the clerk from office at any time. In the absence of the clerk from a meeting, a joint committee may appoint any one of their number (except a headteacher) to act as clerk for the purposes of that meeting. The functions of the clerk to the joint committee are as outlined in paragraph 82 of chapter 3 of this Guide (Governing body powers, duties and procedures).

### **Associate members**

79. An “associate member” is a person who is appointed by a joint committee as a member of that committee but who is not a member of one of the governing bodies. The voting rights of associate members are outlined in paragraphs 88–89 of chapter 3 of this Guide (Governing body powers, duties and procedures). References to “governing bodies” should read “collaborating governing bodies” and references to “committees” should read “joint committees”.

### **Right of persons to attend meetings of joint committees**

80. Except as specified in paragraph 81, below, or if they have a pecuniary interest in a matter, the following people may attend a meeting of a joint committee:
- any members of the joint committee, provided they have not been suspended by one of the collaborating governing bodies;
  - the headteachers, whether or not they are members of the joint committee;
  - the clerk to the joint committee;
  - such other persons as the joint committee may determine.
81. A joint committee may exclude an associate member from any part of its meeting when the business under consideration concerns an individual pupil or member of staff.

### **Proceedings and minutes of joint committees**

82. The proceedings and minutes of joint committees are as outlined in paragraphs 76–90 of chapter 3 of this Guide (Governing body powers, duties and procedures). Any references to “governing bodies” should read “collaborating governing bodies” and references to “committees” should read “joint committees”.

### **Restrictions on persons taking part in proceedings**

83. The restrictions on persons taking part in proceedings of joint committees are as outlined in paragraph 83 of chapter 3 of this Guide (Governing body powers, duties and procedures). References to “governing bodies” should read “collaborating governing bodies” and references to “committees” should read “joint committees”.

### **Collaboration between further education bodies and schools**

84. Additionally, under [Section 166 of the Education and Inspections Act 2006](#) and the [Collaboration Arrangements \(Maintained Schools and Further Education Bodies\) \(England\) Regulations 2007](#), maintained schools are able to form joint committees with Further Education Colleges. The Regulations came into force on 25 May 2007. More detailed guidance can be found on the [GovernorNet](#) website.
85. Subject to paragraph 87, below, one or more governing bodies may make arrangements with a further education body or bodies for their functions to be discharged jointly by establishing joint committees. They may also delegate any of their functions to a joint committee in the same way that they may delegate them to a committee of a single governing body. The procedures and proceedings for joint committees are broadly the same as those for collaborating governing body committees, outlined above.

86. Where a school governing body enters into collaboration arrangements as described at paragraph 85, the [School Staffing \(England\) Regulations 2003](#) (as amended) apply to the discharge of any functions relating to individual members of school staff. The relevant provisions of the instrument and articles of government of the further education governing body apply to the discharge of any functions relating to individual members of college staff.
87. Where the collaborating body is a school governing body, it may only delegate to a joint committee those functions that it is able to delegate to a committee under [Regulations 16–18](#) of the [School Governance \(Procedures\) \(England\) Regulations 2003](#). Where the collaborating body is a further education governing body, it may only delegate to a joint committee functions in accordance with the provisions of its instrument and articles of government.

### **Establishment of joint committees**

88. The provisions of paragraph 77 apply to joint committees of maintained schools and Further Education Colleges. Any reference to “governor” should be read as “member”.

### **Clerks to joint committees**

89. A joint committee must appoint a clerk (who cannot be one of the headteachers or a principal of a Further Education College) and may remove the clerk from office at any time. If the clerk is absent from a meeting, a joint committee may appoint any one of its members (except a headteacher or principal) to act as clerk for the purposes of that meeting. The functions of the clerk to the joint committee are as outlined in paragraph 82 of chapter 3 of this Guide (Governing body powers, duties and procedures).

### **Associate members**

90. An associate member is a person who is appointed by a joint committee as a member of that committee but who is not a member of one of the collaborating bodies. The collaborating bodies (not the joint committees) determine the voting rights of associate members, who cannot vote on any resolution concerning:

- admissions;
- pupil or student discipline;
- an individual pupil or student or a member of staff, if the associate member was excluded from that part of the meeting at which the resolution was considered;
- the budget or financial commitments of one of the collaborating bodies.

Subject to the above, associate members of joint committees of maintained schools and Further Education Colleges who are under 18 years of age can have voting rights at joint committee meetings.

### **Rights of persons to attend meetings of joint committees**

91. Those persons listed in paragraph 80 above may attend a meeting of a joint committee along with the principal of a collaborating body, whether or not he or she is a member of a joint committee.
92. A joint committee may exclude an associate member from any part of its meeting when the business under consideration concerns an individual pupil or member of staff.

### **Proceedings of joint committees**

93. The clerk must convene meetings of the joint committee and, when exercising this function, must comply with any direction given by the joint committee or its chair (providing it is not inconsistent with any direction given by the joint committee).
94. Subject to any direction given under paragraph 93, at least seven clear days in advance of a meeting, the clerk must provide the following to each member of the joint committee and to the headteachers and principals of the collaborating bodies (whether or not they are members of the joint committee):

- written notice of the meeting;
- a copy of the agenda for the meeting;
- any reports or other papers to be considered at the meeting.

A shorter notice period may be given if the chair of the joint committee believes that matters need more urgent consideration, provided that this is made clear in the notice for the meeting.

95. The proceedings of a joint committee are not invalidated by any vacancy in the membership of the committee or any defect in the appointment of any member of the committee.
96. No vote on any matter may be taken at a meeting of a joint committee unless the majority of members of the committee present are members of a collaborating body. Every question to be decided at a meeting of a joint committee must be determined by a majority of the votes of the members of the committee present and voting on the question. Where there is an equal division of votes, the person who is acting as chair for the purposes of the meeting has a second or casting vote, provided that person is a member of a collaborating body.

### **Minutes of joint committee meetings**

97. Minutes of the proceedings of a meeting of a joint committee must be drawn up by the clerk, or by the person acting as the clerk for the purposes of the meeting, and, subject to the approval of the joint committee, must be signed by the chair of the next meeting of the joint committee.
98. As soon as reasonably practicable, the joint committee must make available for inspection by any interested person, and give to the collaborating bodies, a copy of the agenda and signed minutes (or the draft minutes, if approved by the chair) for every meeting of the joint committee and any report or other paper considered at the meeting.
99. The joint committee may exclude from any item specified in paragraph 98 any material relating to:
- a named person who works, or who it is proposed should work, for a collaborating body;
  - a named pupil or student at, or candidate for admission to, a collaborating body;
  - any other matter that, by reason of its nature, the joint committee is satisfied should remain confidential.

### **Restrictions on persons taking part in proceedings**

100. The restrictions on persons taking part in proceedings of joint committees are as outlined in paragraph 66 of chapter 3 of this Guide (Governing body powers, duties and procedures). References to “governing bodies” should read “collaborating bodies”, references to “committees” should read “joint committees” and references to “governor” should read “member of a collaborating body”.

## **THE LAW**

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The Education Act 2002: Sections 24–26

The Education Reform Act 1988: Section 198 and Schedule 10

The School Organisation and Governance (Amendment ) (England) Regulations 2009 (SI number pending as of February 2009)

[The School Governance \(Federations\) \(England\) Regulations 2007: SI 2007/960](#)

[The School Governance \(Collaboration\) \(England\) Regulations 2003: SI 2003/1962](#)

[The Collaboration Arrangements \(Maintained Schools and Further Education Bodies\) \(England\) Regulations 2007: SI 2007/1321](#)

[The School Governance \(Constitution\) \(England\) Regulations 2007: SI 2007/957 \(Regulations 19 and 21–33 and Schedule 6\)](#)

[The School Governance \(Procedures\) \(England\) Regulations 2003: SI 2003/1377 \(as amended by the School Governance \(Constitution and Procedures\) \(England\) \(Amendment\) Regulations 2003: SI 2003/1916; and the School Governance \(Constitution, Procedures and New Schools\) \(England\) \(Amendment\) Regulations 2004: SI 2004/450\)](#)

[The School Governance \(Procedures\) \(England\) \(Amendment\) Regulations 2007: SI 2007/959](#)

[The School Staffing \(England\) Regulations 2003: SI 2003/1963](#)

[The School Standards and Framework Act 1998: Sections 28 and 69](#)

[The Education and Inspections Act 2006: Section 166](#)

## **GUIDANCE**

[Guidance on the School Governance \(Federations\) \(England\) Regulations 2007](#)

[Guidance on the Collaboration Arrangements \(Maintained Schools and Further Education Bodies\) \(England\) Regulations 2007](#)

# 6 THE EARLY YEARS FOUNDATION STAGE AND THE NATIONAL CURRICULUM

## CHAPTER SUMMARY

This chapter explains what the Early Years Foundation Stage (EYFS) and the national curriculum are and gives details of the roles and responsibilities of the headteacher and governing body. Guidance on where the EYFS and national curriculum may not apply and procedures for handling complaints about the curriculum are also included.

### THE EARLY YEARS FOUNDATION STAGE

1. The EYFS brings together three sets of existing requirements and guidance: *Birth to Three Matters*; the *Curriculum Guidance for the Foundations Stages*; and the *National Standards for Under-8s Day Care and Childminding*. It is designed to:
  - set the standards for the learning, development and care that young children from birth to five years old should experience when they are attending a setting outside their family home to ensure that every child makes progress and no child gets left behind;
  - provide for equality of opportunity and anti-discriminatory practice, and ensure that every child is included and not disadvantaged because of ethnicity, culture or religion, home language, family background, learning difficulties or disabilities, gender or ability;
  - create the framework for partnership working between parents and professionals, and between all the settings that the child attends;
  - improve quality and consistency in the early years sector through a universal set of standards which apply to all settings, ending the distinction between care and learning, and providing the basis for the inspection and regulation regime;
  - lay a secure foundation for future learning through learning and development that is planned around the individual needs and interests of the child, is delivered through structured play, and informed by the use of ongoing observational assessment.

The above summary sets out non-statutory guidance. The actual requirements and statutory guidance are contained in the [Statutory Framework for the EYFS](#). (Non-statutory guidance is contained in the *Practice Guidance* document, which is also available through [TeacherNet](#)).

2. From September 2008 it will be mandatory for all schools and early years providers in Ofsted registered settings attended by young children (that is, children from birth to the end of the academic year in which a child has their fifth birthday) to deliver the EYFS. The EYFS is given legal force through an Order and Regulations made under the [Childcare Act 2006](#).
3. The whole of the EYFS is based around four guiding themes:
  - a unique child – every child is a competent learner from birth;
  - positive relationships – children need loving and secure relationships to learn to be strong and independent;
  - enabling environments – the environment plays a key role in supporting and extending children’s development;
  - learning and development – children develop and learn in different ways and at different rates.

4. The statutory part of the EYFS has two main sections:
- welfare requirements – these carry forward existing national standards on issues such as child safety, ratios and the suitability of people working in childcare settings;
  - learning and development requirements – these set out a framework for young children’s learning and development, but without requiring any specific approach for day-to-day practice.

### **Welfare requirements**

5. The general areas that the welfare requirements cover are:
- safeguarding and promoting children’s welfare – promoting the good health of children, preventing the spread of infection and taking appropriate action when they are ill;
  - suitable people – that the adults looking after children, or having unsupervised access to them, are suitable to do so, i.e. have appropriate qualifications, training, skills and knowledge; and that staffing arrangements must be organised to ensure safety and meet children’s needs;
  - suitable premises, environment and equipment – outdoor and indoor spaces, furniture, equipment and toys must be safe and suitable for their purpose;
  - organisation – records, policies and procedures must be in place to ensure every child receives an enjoyable and challenging learning and development experience which is tailored to their needs;
  - documentation – records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children.
6. Each of these general requirements is set out in detail in the EYFS statutory framework, which gives the specific legal requirements as well as the statutory guidance to which all providers must have regard. Ofsted will inspect against all these requirements.

### **Learning and development requirements**

7. The Childcare Act 2006 provides for the EYFS learning and development requirements and comprises of three elements: the early learning goals; the educational programmes; and the assessment arrangements.
- early learning goals – these are the developmental milestones which describe the knowledge, skills and understanding which most, although not all, young children should be able to achieve by the end of the academic year in which they turn five. There is no requirement for children to achieve these milestones, and it is a matter of professional judgement as to how they should be supported towards them;
  - educational programmes – these are the matters, skills and processes which are required to be taught to young children. The educational programmes are set out in short paragraphs in the EYFS statutory framework, and they describe both the overarching skills to be taught within each area of learning and development, and the expectation that practitioners will support children in putting these skills into practice as they are acquired and in a broad range of contexts. Practitioners are required to support children in these areas, but the approach and the pace at which they do so is up to them;
  - assessment arrangements – the EYFS is rooted in play. Assessment in the EYFS is through observation of day-to-day activities (for example, by keeping folders of photos of the child's favourite games, or pictures they have drawn and notes on things the child has especially enjoyed doing). There is no testing. In the year in which children turn five, practitioners are required to record their assessments using the Early Years Foundation Stage Profile (EYFSP) and provide these to the local authority, who will use the information to help them understand how children in their area are developing, and to plan and target the support they offer to providers, schools and families. The child’s Year 1 teacher can also use it to

understand how the children in his or her class have been getting on and what sort of support they might need, and the LA can use the information to plan services for young children and families across the local area.

8. There are six areas covered by the early learning goals and educational programmes, all of which are equally important and none of which can be delivered in isolation from the others. These include:
- personal, social and emotional development
  - communication, language and literacy
  - problem-solving, reasoning and numeracy
  - knowledge and understanding of the world
  - physical development
  - creative development.
9. Statutory assessment for the EYFS takes the form of the Early Years Foundation Stage Profile (EYFSP), which summarises each child's achievement in the above six areas of learning at the end of the EYFS. The Early Years Foundation Stage profile Handbook was published in June 2008 and can be found on the Qualifications and Curriculum Authority (QCA) website at: [www.qca.org.uk](http://www.qca.org.uk). There are no tests in the EYFS. Practitioners draw on their day-to-day observations of children to build up information throughout the final year of the EYFS. Parents and children are given opportunities to contribute to this rounded profile and parents must have the opportunity to discuss the completed profile with staff.

### **CIRCUMSTANCES WHERE THE EYFS DOES NOT APPLY**

10. There are three types of possible exemption from the EYFS learning and development requirements.

Early years providers may apply for exemptions where:

- they are temporarily unable to deliver the full learning and development requirements; or
- a majority of parents agree that an exemption should be applied for because the early years provision is governed by established principles which cannot be reconciled with elements of the EYFS learning and development requirements.

Parents may apply for their own child(ren) to be exempted where:

- their own religious or philosophical convictions cannot be reconciled with the EYFS learning and development requirements.

Exemptions have not been designed for children with learning difficulties or disabilities. The EYFS is designed to be fully inclusive in accommodating the needs of individual children, including children with learning difficulties and disabilities.

Guidance on making applications for exemptions is available to download from the [EYFS website](#).

### **NATIONAL CURRICULUM OVERVIEW**

11. The school curriculum comprises all learning and other experiences that each school provides for its pupils. For maintained schools (except special schools established in a hospital) this includes the national curriculum, religious education (RE), collective worship, sex and relationship education (SRE), work-related learning and careers education. The school curriculum has two aims:
- to provide opportunities for all pupils to learn and achieve; and
  - to promote pupils' spiritual, moral, social and cultural development and prepare all pupils for the opportunities, responsibilities and experiences of life.

These two aims are reflected in [Section 78 of the Education Act 2002](#), which requires all maintained schools to provide a balanced and broad-based curriculum to meet these aims.

12. The national curriculum secures for all pupils, irrespective of social background, culture, race, gender and differences in ability and disabilities, a right to a number of areas of learning and to develop the knowledge, understanding, skills and attitudes necessary for their self-fulfilment and development as active and responsible citizens. It also sets out expectations for learning and attainment for the benefit of pupils, parents, teachers, governors, employers and the public, and establishes national standards for the performance of all pupils in the subjects that it includes.
13. In addition, the national curriculum has an overarching statutory inclusion statement. This outlines how teachers can modify, as necessary, the national curriculum programmes of study to provide all pupils with relevant and appropriately challenging work at each key stage. It requires teachers to have due regard to the three principles that are essential to developing a more inclusive curriculum:
  - setting suitable learning challenges;
  - responding to pupils' diverse learning needs;
  - overcoming potential barriers to learning and assessment for individuals and groups of pupils.

The national curriculum handbooks give further details and examples of how these principles may be achieved in practice.

14. Responsibility for the curriculum is shared between the headteacher, the governing body, Local Authorities (LAs) and the Secretary of State for Children, Schools and Families.
15. The current version of the national curriculum is set out in [Sections 84 and 85 of the Education Act 2002](#).

### THE NATIONAL FRAMEWORK

16. The basic features of the school curriculum were first laid down in the [Education Reform Act 1988](#). [Part 6 of the Education Act 2002](#) gives the legal framework for the current curriculum. Apart from the national curriculum, maintained schools must offer religious education, sex education, work-related learning and careers education for specified year groups.
17. The national curriculum provides opportunities for learning to take place across the curriculum. The four areas of learning which schools should consider across the whole curriculum are as follows:
  - promoting spiritual, moral, social and cultural development across the national curriculum;
  - promoting personal, social and health education;
  - promoting skills across the national curriculum;
  - promoting other aspects of the school curriculum.

These areas are described in more detail in the national curriculum handbooks.

18. The governing body shares responsibility with the headteacher and the LA for making sure that the national curriculum is taught. This responsibility includes making sure that enough lesson time is provided for pupils to cover the national curriculum and other statutory requirements. (Chapter 13 of this Guide (Behaviour and attendance) gives the current recommended minimum weekly lesson times.) The governing body must also ensure that, in respect of all courses provided for pupils below the age of 19 which lead to external qualifications, those qualifications are approved. (Details of approved qualifications can be found on the Department for Children, Schools and Families (DCSF) website, at [Section 96 Qualifications](#).)



## STAGES OF THE CURRICULUM

19. The national curriculum is divided into four stages: the table below shows the age ranges covered by the four key stages.

	Key Stage 1	Key Stage 2	Key Stage 3	Key Stage 4
Age	5–7	7–11	11–14	14–16
Year Groups	1–2	3–6	7–9	10–11

Schools have some discretion over when to begin teaching the key stage programmes of study, as the law requires that programmes of study should be taught during the key stage, not that they should be introduced at a particular time. For example, schools may choose to spread their teaching of the Key Stage 1 programme of study over a longer period by covering some aspects with children in reception classes, if they judge this to be appropriate to the needs and stage of development of the children.

## SUBJECTS TAUGHT IN KEY STAGES 1–4

20. The table below shows the statutory (•) and non-statutory (\*) subjects for each key stage.

Subject	Key Stage 1	Key Stage 2	Key Stage 3	Key Stage 4
English	•	•	•	•
Mathematics	•	•	•	•
Science	•	•	•	•
Design and technology	•	•	•	
Information and communication technology (ICT)	•	•	•	•
History	•	•	•	
Geography	•	•	•	
Modern foreign languages			•	
Art and design	•	•	•	
Music	•	•	•	
Physical education (PE)	•	•	•	•
Citizenship			•	•
Religious education (RE)	•	•	•	•
Careers education			•	•
Sex education			•	•
Work-related learning				•
Personal, social, health economic (PSHE) education	*	*	*	*

21. For all key stages, two hours per week of high-quality PE and school sport is recommended for all pupils. This includes the national curriculum requirement for PE and

extra-curricular activities. Competitive games activities are compulsory throughout Key Stages 1–3.

#### **RECENT CHANGES TO KEY STAGE 4**

22. The Key Stage 4 statutory requirements are as follows:

- a small group of compulsory subjects comprising English, mathematics, science, ICT, citizenship, PE and RE;
- compulsory areas of learning comprising careers education, sex education and work-related learning;
- entitlement areas comprising the arts, design and technology, the humanities and modern foreign languages;
- statutory entitlement to have access to a course leading to two science GCSEs.

(Guidance and information on Key Stage 4 can be found on the Qualifications and Curriculum Authority (QCA) [14–19 website](#).)

#### **ASSESSING ACHIEVEMENT**

23. Teachers should monitor their pupils' progress in each subject as a normal part of their teaching. By law, schools must assess pupils' attainment at four key points in their compulsory education. These key points are when pupils have completed the EYFS and the programmes of study for Key Stages 1, 2 and 3, usually at the ages of 5, 7, 11 and 14. This process is known as statutory assessment. For the EYFS this means the completion of the EYFS Profile in the year in which the child is 5. At Key Stage 1 this consists of teacher assessment, informed by statutory tests and tasks, at Key Stage 2 this consists of teacher assessment and national curriculum tests and at Key Stage 3, this consists of teacher assessment only. At the end of Key Stage 4, pupils generally take public examinations, for example GCSEs.

24. For each national curriculum subject, there is a programme of study which sets out the subject knowledge, skills and understanding that pupils are expected to develop in each key stage. The programmes of study map out attainment targets, which are split into eight levels. The majority of pupils progress through the levels, beginning with level 1 at Key Stage 1. The levels (and "exceptional performance" for pupils working above level 8) are used in statutory assessments for key stages 1, 2 and 3. GCSEs use a grading scale from A\* to G. Pupils with outstanding achievements are awarded A\*.

25. Teachers are required to undertake assessments of pupils' progress in English, mathematics and science at the end of Key Stages 1, 2 and 3. At the end of Key Stage 3, they are also required to undertake assessments in other national curriculum subjects. Teacher assessments are judgements of the level of attainment achieved by the pupil using national curriculum levels 1 to 8 and for pupils with special educational needs (SEN) who are working towards national curriculum level 1 "P scales".

26. The assessment arrangements for each key stage are as follows:

- Key Stage 1 – teacher assessment in speaking and listening, reading and writing, mathematics and science. Assessments in reading, writing and mathematics must take account of results from Key Stage 1 tasks and tests;
- Key Stage 2 – teacher assessment and national curriculum tests in English, mathematics and science (pupils working below level 3 should not take the tests);
- Key Stage 3 – teacher assessment in all national curriculum subjects. Schools may also wish to administer optional tests in English, mathematics and science. These tests will not be externally marked.

- Key Stage 4 – at the end of this key stage, at age 16, the GCSE is the main way of assessing pupils.
27. The headteacher is responsible for ensuring that statutory assessment is fully and correctly administered. (For more information and guidance on the assessment arrangements for each key stage, see the Guidance section, below.)
28. LAs are responsible for monitoring the administration of statutory assessment by schools. The headteacher and governing body must provide access to the school's premises and records for the LA's staff undertaking monitoring visits.

### **School reports and results**

29. The headteacher is responsible for sending a written report to parents on their child's achievements at least once during the school year. The information which must be included in the annual report to parents is set out in Schedule 1 of the [Education \(Pupil Information\) \(England\) Regulations 2005 \(and the 2008 amendments to the Regulations\)](#). These reports must include:
- teacher assessment results at the end of the EYFS and Key Stage 1;
  - national curriculum test results and teacher assessment results at the end of Key Stages 2 and 3; and
  - the results of any public examinations taken.

Schools must publish whole-school results from Key Stages 1–3. These may be included with information given in the School Profile. The DCSF also publishes national analyses of the results. See chapter 25 of this Guide (Providing information).

30. The headteacher must send the EYFSP results to the LA. The governing body must send teacher assessment results for Key Stage 1 to the LA, and for Key Stages 2 and 3, to the Qualifications Curriculum Authority (QCA). The LA collects the EYFSP and Key Stage 1 results and sends them on to the DCSF. See chapter 25 of this Guide (Providing information).

### **POLITICAL BIAS**

31. The governing body, headteacher and the LA must not allow the teachers to promote one-sided political views when teaching any subject. Teachers must present different views in a balanced way where political issues are covered. The governing body, headteacher and LA must also prevent pupils under 12 from taking part in political activities while at school, or otherwise, where the activity is arranged by a member of staff or anyone acting on behalf of the school or a member of staff.

### **CURRICULUM POLICY**

32. Under the [Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000](#), governing bodies and headteachers are required to produce a curriculum policy. This replaces the requirement under the [School Standards and Framework Act 1998](#) for a curriculum plan. The change from plan to policy should make clearer that the approach should be “broad brush” – it is not intended to be a detailed map of all secular curriculum activities. The policy should set out the principles underpinning the curriculum and reflect the school's commitment to developing all aspects of their pupils' lives. It allows schools to state values and aims as well as the general principles governing their approaches to issues such as inclusion and cross-curricular learning. As a guide, it is expected that normally the policy could be set out on a single page of continuous writing. The Regulations make the headteacher responsible for preparing the policy and reviewing it annually. The governing body must consider and agree the policy and monitor and review its implementation.

## SEX AND RELATIONSHIP EDUCATION

33. Governing bodies and headteachers of maintained schools providing primary education must decide whether sex and relationship education (SRE), beyond that set out in the statutory national curriculum for science, should be included in their school's curriculum and, if so, what it should consist of and how it should be organised. They must keep a written record of their decisions. Schools should consult parents about their SRE programmes.
34. All maintained schools providing secondary education must provide sex education (including education about HIV and AIDS and other sexually-transmitted diseases). All maintained schools should teach human growth and reproduction as set out in the statutory national curriculum for science.
35. All governing bodies must have a written statement of whatever policy they adopt on SRE, and make it available to parents. The LA, governing body and headteacher should also make sure that any SRE is embedded in Personal, Social, Health and Economic (PSHE) education, in order to ensure that pupils consider the moral aspects of sex education and are encouraged to develop loving and caring relationships.
36. Parents have the right to withdraw their children from all or part of any SRE provided (but not from the biological aspects of human growth and reproduction necessary under the national curriculum for science).
37. The DCSF issued guidance on SRE to all maintained schools in July 2000. The guidance is underpinned by the [Learning and Skills Act 2000](#), which gives headteachers and governors a statutory responsibility to have regard to the guidance when developing their SRE policies and to protect pupils from inappropriate teaching materials (see the Guidance section for more information).

## DRUG EDUCATION

38. Learning that health and body functions can be affected by drugs (including alcohol, tobacco, volatile substances and medicines) is a compulsory part of science in the national curriculum. It is for individual schools to consider whether and how they might wish to extend the provision for drug education beyond this.
39. Drug education should be delivered through well-planned Personal, Social, Health and Economic (PSHE) education and citizenship provision. Schools are expected to use the following as the basis for developing drug education:
  - the non-statutory frameworks of PSHE education and citizenship at Key Stages 1 and 2;
  - the programme of study for personal well-being within PSHE education at Key Stages 3 and 4;
  - the statutory citizenship programme of study at Key Stages 3 and 4; and
  - the statutory requirements within the National Curriculum Science Order for all phases.
40. All schools should have a school policy on drug education and prevention. It should set out the aims of the school's programme of drug education and summarise its policy on what to do when there are concerns about an individual in relation to drugs. (The DfES publication [Drugs: Guidance for Schools](#) offers guidance on drug education and prevention, and preparing a drugs policy.)

## CAREERS EDUCATION AND GUIDANCE

41. All publicly funded secondary schools, including specialist schools and pupil referral units, are required to provide a programme of careers education to pupils in Years 9–11 ([Section 43 of the Education Act 1997](#)). Since September 2004 this requirement has also covered young people in Years 7 and 8 (see the [Education \(Extension of Careers Education\) \(England\) Regulations 2003](#)). Also, each secondary school must have an

accessible careers library that contains up-to-date information on careers and post-16 progression opportunities ([Section 45 of the Education Act 1997](#)).

- 41A. From September 2009, the Education and Skills Act 2008 will make changes to the way in which schools are required to meet these statutory duties. Schools will be required, in providing a programme of careers education, to ensure that information is provided in an impartial manner and that any advice promotes the best interests of the pupil. Also, schools will be required to ensure that any guidance and reference materials provided to pupils covers the full range of options available to them for 16–19 education and training. Schools will be required to have regard to guidance which will support them in delivering their statutory duties relating to careers education. The guidance will include principles of impartial careers education and is due to be published for the autumn term 2009.
42. In the revised Personal, Social, Health and Economic (PSHE) education curriculum, careers education forms part of the economic well-being strand. There is no prescribed programme of study for careers education, but the Department has published a national non-statutory framework for careers education and guidance for 11- to 19-year-olds. This describes aims, learning outcomes and content for careers education programmes. A Careers Education Support Programme provides good practice guidance and exemplar schemes of work to support careers education teachers (available on the Programme's [central website](#)).
43. The Secretary of State for Children, Schools and Families has a duty to ensure the provision of careers services for school and college students ([Section 8 of the Employment and Training Act 1973](#)). Maintained schools, pupil referral units, further education and sixth-form colleges must work in partnership with Connexions services to make impartial careers guidance available to young people.

## RELIGIOUS EDUCATION

44. All maintained schools must provide RE for their pupils. At voluntary aided schools with a religious character, RE will be in line with the tenets of the faith of the school. Whether a foundation or voluntary school has a religious character and the particular religion or religious denomination concerned is set out in the [Designation of Schools Having a Religious Character \(England\) Order 1999](#). There are no foundation special schools that have a religious character.
45. In community schools and all foundation and voluntary schools without a religious character, RE will be taught in accordance with the agreed syllabus for the area, which is drawn up by a local conference called an Agreed Syllabus Conference (ASC), attended by teachers, local churches, faith groups and the LA. The conference is advised by Standing Advisory Councils on Religious Education (SACREs), which consist of many of the same groups. The headteacher shares responsibility with the LA and the governing body for making sure that the RE requirements are met. Parents have the right to withdraw their children from all or part of any maintained school's RE provision. They are not obliged to give a reason and the school is expected to comply with the request. Supervision of any withdrawn child remains the responsibility of the school.
46. All locally agreed syllabuses must reflect the fact that the religious traditions in Great Britain are in the main Christian, while taking account of the teaching and practices of the other principal religions represented in Great Britain. The Department for Education and Skills (DfES), in partnership with the QCA, issued a non-statutory national framework for RE in October 2004, which supports those with a responsibility for RE in maintained schools, principally SACREs, and sets national standards and expectations to help promote higher standards in teaching and learning.

### Voluntary aided schools with a religious character

47. RE in a voluntary aided school with a religious character is provided in accordance with the school's trust deed or, where provision is not made by a trust deed, in accordance with the beliefs of the religion or denomination specified in the Order referred to above.

48. Where parents ask for RE to be provided for any pupils according to the locally agreed syllabus, and it is not convenient for them to attend a school at which the syllabus is in use, the governing body must make arrangements. This requirement is lifted if, because of any special circumstances, it would be unreasonable to do so.

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### Foundation and voluntary controlled schools with a religious character

49. RE in a foundation or voluntary controlled school with a religious character must be provided in accordance with the locally agreed syllabus for the area. However, where parents request it, provision may be made in accordance with the school's trust deed or, where provision is not made by trust deed, in accordance with the beliefs of the religion or denomination specified in the Order referred to above. This requirement is lifted if, because of any special circumstances, it would be unreasonable to do so. The governing body is responsible for ensuring that such religious education is provided for not more than two periods in each week. The headteacher shares responsibility with the LA and the governing body for making sure that the RE requirements are met.

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### COLLECTIVE WORSHIP

50. All maintained schools must provide a daily act of collective worship for their pupils. The precise nature of the collective worship and religious education at a foundation or voluntary school will depend on the religious character of the school. To determine whether a foundation or voluntary school has a religious character and the particular religion or religious denomination concerned, refer to guidelines set out in the [Designation of Schools Having a Religious Character \(England\) Order 1999](#).

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51. All maintained schools must provide daily collective worship for all registered pupils (apart from those who have been withdrawn from this by their parents or, from September 2007, sixth-form pupils, as defined in [Section 71\(8\) of the Schools Standards and Framework Act 1998](#), who have withdrawn themselves). This collective worship is usually provided within daily assembly, but can also be done within individual classes or groups of children. This may be particularly appropriate for younger children in primary schools. Parents have the right to withdraw their children from all or part of any maintained school's act of worship. They are not obliged to give a reason.

52. For community schools and foundation schools without religious character, the headteacher is responsible for arranging the daily collective worship after consulting with the governing body. For voluntary schools and foundation schools with a religious character, the governing body is responsible for arranging daily collective worship after consulting with the headteacher. Daily collective worship must be wholly or mainly of a broadly Christian character. The precise nature will depend on the family background, ages and abilities of the pupils.

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53. Most schools should be able to include all pupils in their act of collective worship. However, there may be exceptional cases where, in view of the family background of some or all pupils, the headteacher and governing body feel that a broadly Christian act of worship is not suitable. In these circumstances, the headteacher can apply to the local SACRE to have the Christian content requirement lifted. Before doing so, the governing body should consult the parents of pupils at the school.

### Foundation schools with a religious character and voluntary schools

54. Collective worship in foundation schools with a religious character and voluntary schools will be in accordance with the school's trust deed. Where provision is not made by a trust deed, the worship should be in accordance with the beliefs of the religion or denomination specified for the school.

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### CIRCUMSTANCES WHERE THE NATIONAL CURRICULUM MAY NOT APPLY

55. The national curriculum offers schools considerable flexibility to develop their curriculums to meet the needs of the majority of pupils, for example by the inclusion statement, which

allows programmes of study to be modified to suit a pupil's needs. In exceptional circumstances, where it does not maximise the learning and achievement of some individual pupils, headteachers may consider disapplying some or all of the curriculum, including all or part of the statutory assessment arrangements. Guidance that explains when and how to disapply aspects of the national curriculum is set out in *Disapplication of the National Curriculum (Revised)*.

56. The methods of disapplication for individual pupils are as follows:

- for a temporary period through Regulations under [Section 93 of the Education Act 2002](#) – see the [Education \(National Curriculum\) \(Temporary Exceptions for Individual Pupils\) \(England\) Regulations 2000](#);
- through a statement of SEN under [Section 92 of the Education Act 2002](#).

For groups of pupils or the school community, disapplication is available for a time-limited period to enable curriculum development or experimentation under [Section 90 of the Education Act 2002](#).

57. Disapplication may be of all or part of the national curriculum, including all or part of separate programmes of study and all or part of statutory assessment arrangements. However, schools should retain pupils' access to as much of the national curriculum as possible.

### Temporary disapplication

58. Under temporary disapplication, the headteacher will issue either a special or a general direction for six months. Within three working days of the direction being given, the headteacher must send a copy to the chair of the governing body, the LA and at least one of the pupil's parents. General directions can be repeated up to two times, giving a maximum disapplication of 18 months without the need for written consent from the LA or the governing body. The parents can appeal to the governing body if they disagree with the direction. If they are not satisfied with the way that the governing body deals with their appeal, they may complain formally, using the LA procedures for handling complaints about the actions of governing bodies and LAs in relation to the curriculum, approved by the Secretary of State for Children, Schools and Families.

### Disapplication through a statement of special educational needs

59. A statement of SEN may disapply national curriculum subjects or assessment arrangements for individual pupils. Before considering this option, schools should explore the flexibility available within the curriculum, in particular the inclusion statement, to ensure that the pupil has appropriate access to learning the national curriculum subjects. For example, aspects of the programme of study from an earlier key stage may be used without the need to disapply. Where a pupil does have a statement, this must be reviewed annually. If it is likely that disapplication will be necessary for a pupil being assessed, the pupil can be disapplied under temporary disapplication through a special direction. (Further guidance on assessing pupils' SEN is given in the Department's *Special Educational Needs Code of Practice*.)

### Disapplication for curriculum development work or experiments

60. Disapplication under Section 90 enables schools to develop their curriculum beyond the normal purview of the national curriculum and the other disapplication provisions. It allows schools to disapply aspects of the national curriculum for a specified period in order to meet their aims through innovative curriculum development. It can be sought for the whole school, a key stage, year groups or groups of pupils, whereas decisions to disapply under the other Regulations must be made for individual pupils.

61. The application to the Secretary of State for Children, Schools and Families may be made by:

- the governing body (with LA agreement)

## 6. THE CURRICULUM

- the LA (with governing body agreement)
- the QCA (with agreement of both the LA and governing body)
- the governing body
- the QCA (with agreement of the governing body).

62. The application must be agreed by the governing bodies of all the schools that it includes and their LAs (further details are available in the *Disapplication of the National Curriculum (Revised)*).

### COMPLETING KEY STAGE 4 REQUIREMENTS EARLY

63. Schools can stop teaching the national curriculum Key Stage 4 programmes of study before the end of Year 11 to any pupils in any subject except PE. However, they can only do this after they have taught the programmes of study in full and, if appropriate, entered the pupils in GCSE or other examinations. This allows pupils to progress beyond Key Stage 4 in those subjects or take up other subjects. Any programme of study at any key stage may be completed early in this way, freeing up time for other learning, but the flexibility is likely to be of most use at Key Stage 4.

### COMPLAINTS ABOUT THE CURRICULUM

64. All LAs have to set up procedures, approved by the Secretary of State for Children, Schools and Families, for handling complaints about the actions of governing bodies and LAs on the curriculum. For complaints against the governing body, the first formal stage of the procedure is for the governing body to consider the complaint. If the person with the complaint is still not satisfied after this, he or she can put the complaint to the LA. Complaints that are just about the LA's powers or functions only need to be considered by the LA.
65. Parents may use the complaints procedure if they believe that either the LA or the governing body is failing to:
- provide the national curriculum in the school or for a particular child;
  - follow the law on charging for school activities;
  - offer only approved qualifications or syllabuses;
  - provide RE and daily collective worship;
  - provide the information that they have to provide;
  - carry out any other statutory duty relating to the curriculum;
  - act reasonably in any of the above cases.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

### Education Acts

The Education Act 2002: [Part 6](#)

The Education Act 1996: [Part 5](#)

The Education Act 1997: [Parts 4 and 7](#)

School Standards and Framework Act 1998: [Part 2](#)

The Learning and Skills Act 2000

The Childcare Act 2006



## National curriculum Orders

The national curriculum for each subject is governed by a statutory order and a related subject booklet, which sets out the curriculum for each subject.

The Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (England) Order 2000: SI 2000/1604

The Education (National Curriculum) (Attainment Targets and Programmes of Study in English in respect of the Third and Fourth Key Stages) (England) Order 2008: SI 2008/1755

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (England) Order 2000: SI 2000/1598

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1759

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Science) (England) Order 2004: SI 2004/1217

The Education (National Curriculum) (Attainment Targets and Programme of Study in Science in respect of the Third Key Stage) (England) Order 2008, SI 2008/1763

The Education (National Curriculum) (Attainment Targets and Programme of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) Order 2008: SI 2008/1760

The Education (National Curriculum) (Attainment Targets and Programme of Study in Design and Technology in respect of the Third Key Stage) (England) Order 2008: SI 2008/1754

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology) (England) Order 2000: SI 2000/1061

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology in respect of the Third and Fourth Key Stages) (England) Order 2008: SI 2008/1607

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (England) Order 2000: SI 2000/1607

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1762

The Education (National Curriculum) (Attainment Targets and Programme of Study in History in respect of the Third Key Stage) (England) Order 2008: SI 2008/1757

The Education (National Curriculum) (Attainment Targets and Programme of Study in Geography in respect of the Third Key Stage) (England) Order 2008: SI 2008/1756

The Education (National Curriculum) (Attainment Targets and Programme of Study in Art and Design in respect of the Third Key Stage) (England) Order 2008: SI 2008/1752

The Education (National Curriculum) (Attainment Targets and Programme of Study in Music in respect of the Third Key Stage) (England) Order 2008: SI 2008/1761

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Citizenship in respect of the Third and Fourth Key Stages) (England) Order 2008: SI 2008/1753

### **Assessment Orders**

The Early Years Foundation Stage (Learning and Development Requirements) Order 2007: SI 2007/1772

The Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004: SI 2004/2783

The Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003: SI 2003/1038

The Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) Order 2003: SI 2003/1039

The Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) (Amendment) Order 2008, SI 2008/3086

### **Other Orders**

The Designation of Schools Having a Religious Character (England) Order 1999: SI 1999/2432

### **Regulations**

The Education (School Government) (Terms of Reference) (England) Regulations 2000: SI 2000/2122

The Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000: SI 2000/2121

The Education (School Performance Information) (England) Regulations 2007: SI 2007/2324

Early Years Foundation Stage (Welfare Requirements) Regulations 2007: SI 1771

The Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2008: SI 1953

The Early Years Foundation Stage (Learning and Development Requirements) Order 2007: SI 1772

Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008: SI 1952

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008: SI 1743

## **GUIDANCE**

### **Early Years Foundation Stage**

Early Years Foundation Stage Statutory Framework and Practice Guidance

Copies of the full support pack are available from DCSF Publications (tel. 08456 022 260, or Textphone 08456 055 560, quoting ref. 00261-2008PCK-EN)

Early Years Foundation Stage and Key Stage 1 Assessment and Reporting Arrangements. Copies can be accessed on the Qualifications and Curriculum Authority (QCA) website at: <http://www.qca.org.uk>

Early Years Foundation Stage Profile: Handbook

Copies can be obtained from QCA Publications, tel: 08700 60 60 15

### **National curriculum documents**

Copies of the National Curriculum Handbooks for primary and secondary schools can be found on the [National Curriculum website](#). (Hard copies can be downloaded or ordered via this website.)

*Code of Practice on Identification and Assessment of Special Educational Needs* (DfEE)

Disapplication of the National Curriculum (Revised) (00224-2006BKT – EN, issued September 2006)

Drugs: Guidance for Schools 2004 (DfES)

*Key Stage 1 Assessment and Reporting Arrangements* and *Key Stage 2 Assessment and Reporting Arrangements*: These two publications are sent to all schools every autumn, and are available at the QCA website. They are also available via the QCA's publication line (tel: 08700 606 015).

The 2009 Key Stage 3 Teacher assessment and reporting arrangements (TARA) have been sent to all maintained schools (independent schools choosing to submit teacher assessment and P scale data). The 2009 TARA replaces the Key Stage 3 Assessment and reporting arrangements (ARA) and sets out statutory arrangements and provides information and guidance on teacher assessment for Key Stage 3 in 2009.

The online version of the 2009 TARA can be found on the QCA website at [www.qca.org.uk/ara](http://www.qca.org.uk/ara)

Learning Outcomes from Careers Education and Guidance (QCA 99/359)

Maintaining Breadth and Balance at Key Stages 1 and 2 (QCA Booklet)

Planning, Teaching and Assessing the Curriculum for Pupils with Learning Difficulties (QCA booklet; see the [Learning difficulties section](#) on the QCA website)

Religious Education and Collective Worship (DFE Circular 1/94)

[Sex and Relationship Education Guidance](#) (DfEE 0116/2000)

DCSF guidance and documents are available on its [website](#), or on the [National Curriculum website](#), or through the publication line (tel: 0845 602 2260). QCA documents are available from the [QCA website](#) or through their publication line (tel: 08700 60 60 15).

Subject Orders and Regulations are available on the [OPSI website](#) or via the publication line (tel: 0870 600 5522).

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# 7 CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND OTHER VULNERABLE CHILDREN

## CHAPTER SUMMARY

This chapter deals with the responsibilities of mainstream schools for providing education and learning activities for pupils with special educational needs (SEN). Governing bodies have important responsibilities towards children with SEN, whether or not they have a statement. These responsibilities are summarised in this chapter.

## OVERVIEW OF RELEVANT LEGISLATION

1. Special education has never been a matter just for special schools. The needs of the majority of pupils with SEN will be met in mainstream schools. Many of the provisions in present legislation can be traced back to the 1981 Education Act, and to a Government Committee of Enquiry under Baroness Warnock, which reported in 1978. This means that normally children with SEN should be educated in mainstream schools unless their parents disagree. The [Education Act 1996](#) sets out the framework for this.
2. The Education Act 1993, which was replaced by the 1996 Act, required the Secretary of State to issue a Code of Practice on identifying, assessing and making provision for children with SEN. [The Code](#) (current version issued in 2001) sets out detailed guidance on all aspects of providing for SEN in mainstream and special schools. All schools, Local Authorities (LAs) and other providers must take account of the Code. In addition, the [Special Educational Needs and Disability Act 2001](#) strengthened the right to a mainstream education for pupils with SEN, and introduced statutory information and advice for parents of children with SEN, and informal dispute arrangements.
3. Schools and their governing bodies have an important role in supporting LAs to discharge their duty under [Section 22 of the Children Act 1989](#) (inserted by [Section 52 of the Children Act 2004](#)) to promote a looked-after child's educational achievement.

## DEFINITIONS

4. Legally, a child is defined as having SEN if he or she has a learning difficulty which calls for special educational provision to be made for him or her. A learning difficulty means that the child has significantly greater difficulty in learning than most children of the same age, or that a child has a disability which prevents or hinders him or her from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the LA. Children who need special education are not only those with obvious difficulties, such as those who are physically disabled, deaf or blind. They include those whose learning difficulties are less apparent, and emotionally vulnerable children. Many school children may need special educational help at some stage in their school careers – currently the figure stands at 20 per cent of the school population.
5. Special educational provision can be made in many different ways. It can mean extra help for a child being taught in an ordinary class, or it can involve teaching the child in a specially resourced unit attached to a mainstream school, or in a special school. In a few cases the needs of a child may be very complex or severe and require the LA to make a statutory assessment based on specialist advice.

## ASSESSMENTS

6. The LA retains overall responsibility for SEN provision and is responsible for formally assessing children in its area with SEN who may need a statement of SEN. A child can be referred to the LA for assessment by the child's parents. Schools may also ask the LA to assess a child whom they think may need a statutory assessment. The LA has six weeks

from referral to consider whether a statutory assessment is necessary. At the end of this period it must inform the parents of its decision.

7. Guidance for carrying out a statutory assessment is given in chapter 7 of the [SEN Code of Practice](#). Parents must be closely involved, and their views carefully considered at all stages of the assessment process. Guidance on working with parents is set out in chapter 2 of the SEN Code. The LA must also seek advice from educational, medical, psychological and social services professionals, and from any other source it considers appropriate. The views of the child should also be sought. The LA must complete the assessment within 10 weeks of the date on which it agreed to assess the child and must then decide whether to make a statement of SEN for the child.

### Statement of SEN

8. The statement identifies all the child's SEN and the arrangements needed to meet those needs, either in a mainstream school, in a community special or foundation special school, a non-maintained school or through "education otherwise". Within two weeks of deciding to make a statement, the LA must send a proposed statement to parents. The statement is in six parts, as follows.

<b>Part 1</b>	Personal details, including the child's name and the name and address of parents.
<b>Part 2</b>	Details of the child's SEN in terms of his or her learning difficulties.
<b>Part 3</b>	Details of the special educational provision that should be made, including the long-term objectives to be achieved, and any arrangements for setting short-term targets and monitoring progress towards those targets.
<b>Part 4</b>	The type and name of the school where the SEN will be met, or the arrangements for education, other than in school.
<b>Part 5</b>	Details of all relevant non-educational needs, as agreed between the health services, social services or other agencies and the LA.
<b>Part 6</b>	How the non-educational provision required to meet the needs set out in Part 5 should be met, including the objectives of the provision and arrangements for monitoring progress in meeting these objectives.

9. All advice received and taken into consideration during the assessment, including parental, educational, medical, psychological advice and that supplied by Social Services, must be attached to the proposed statement.
10. The proposed statement must be completed, except for Part 4, which should be left blank. Parents can then say which school in the maintained sector they prefer their child to attend. LAs must meet the parents' preference unless:
- the school is unsuitable for the child's age, ability, aptitude or SEN;
  - the placement would affect the efficient education of other children;
  - the placement would affect the efficient use of resources.
11. The governing body must admit a pupil whose statement names their school. Before naming a school in a statement, the LA must consult the governing body of that school.
12. Parents can make representations for a placement outside the maintained sector. The LA must consider parents' representations before making a decision on whether to name the school on a pupil's statement.
13. Within eight weeks of issuing the proposed statement, the LA must serve the parents with a copy of the final statement. The process of making an assessment and statement should take no longer than 26 weeks.

14. Each statement must be reviewed at least once a year. Chapter 9 of the [Code of Practice](#) gives detailed guidance on carrying out a review. The annual review in Year 9 will involve other agencies such as the Connexions service and the social services that are likely to play a major role when the child leaves school. A Transition Plan will be prepared, drawing together information from a range of individuals within and beyond the school, in order to plan coherently for the young person's transition to adult life.
15. As part of the review process, the LA must keep reviewing what they provide for teaching children with SEN. LAs have a general duty to educate a child in a mainstream school, as long as this is consistent with the parents' wishes and the child receives the appropriate special educational provision. In addition, the child's inclusion should be compatible with the efficient education of other children.

## APPEALS

16. The First-tier Tribunal (Special Educational Needs and Disability) (formerly the Special Educational Needs and Disability Tribunal (SENDIST)) considers parents' appeals against the decisions of LAs about children's assessments and SEN statements if parents cannot reach agreement with the LA. It also hears claims of disability discrimination in education.

### Special educational needs appeals

17. The First-tier Tribunal (Special Educational Needs and Disability) can hear parents' appeals against LA decisions about children's SEN. Parents can appeal to the tribunal if the LA:
- refuses to carry out an assessment;
  - refuses, having carried out an assessment, to issue a statement of their child's SEN.

If the LA has made a statement, or changed a previous statement, parents can appeal against:

- the parts which describe their child's SEN (Part 2) and set out the special educational help (Part 3) that the LA will provide;
- the school named in Part 4 of the statement;
- the LA not naming a school in Part 4.

Parents can also appeal if the LA:

- refuses to change the school named in their child's statement, if the statement is at least a year old (but parents can only ask for an LA maintained school and cannot ask for a change to the type of school named);
- refuses to reassess their child's SEN if it has not made a new assessment for at least six months;
- decides to stop maintaining a statement for their child;
- decides not to change their child's statement after carrying out a reassessment.

18. The First-tier Tribunal (Special Educational Needs and Disability) booklet *Special educational needs: How to appeal* provides full information on when and how parents can appeal, about decisions that can be appealed and the whole appeals process (see the Guidance section, below).

### Disability discrimination in schools

19. SENDIST can hear parents' claims about disability discrimination in schools. For all types of schools the First-tier Tribunal handles discrimination claims about fixed-term (temporary) exclusions, and education and services linked to education in all schools. The First-tier Tribunal also considers disability discrimination claims regarding admissions and permanent exclusions in the independent and non-maintained sectors.

20. SENDIST produces a further booklet, *Disability Discrimination in Schools: How to Make a Claim*. This provides information about when and how parents can make a claim (see the Guidance section, below).

### **RESPONSIBILITIES OF THE GOVERNING BODY**

21. The governing body should decide, with the headteacher, the school's general policy and approach to meeting children's SEN, for those with statements and those without. It must set up appropriate staffing and funding arrangements and oversee the school's work. The general duties of governing bodies and the "responsible person" are set out in full in paragraphs 1:16 to 1:22 of the [SEN Code of Practice](#).
22. For mainstream (non-special) schools, the governing body may also appoint a committee to monitor the school's work for children with SEN.
23. In summary, governing bodies of mainstream (non-special) schools have legal duties under the 1996 Act to:
- use best endeavours in exercising their functions that the necessary special arrangements are made for any pupil who has SEN;
  - ensure that parents are notified by the school when SEN provision is being made for their child;
  - make sure that the responsible person makes all staff who are likely to teach the pupil aware of those needs;
  - make sure that the teachers are aware of the importance of identifying pupils who have SEN and of providing appropriate teaching;
  - consult the LA and the governing bodies of other schools when it seems necessary to coordinate special educational teaching in the area;
  - make arrangements to allow pupils with SEN to join in the everyday activities of the school as far as is practical;
  - report each year to parents on their policy for pupils with SEN;
  - take account of the [SEN Code of Practice](#) when carrying out their duties towards all pupils with SEN.

The responsible person is generally the headteacher, but may be the chair of the governing body or a governor appointed by the governing body to take that responsibility. If the responsible person is the headteacher, it may be helpful for one other governor to have an interest in SEN.

24. In summary, governing bodies of special schools have legal duties under the 1996 Act to:
- use best endeavours in exercising their functions that the necessary special arrangements are made for any pupil who has SEN;
  - make sure that the responsible person tells all staff likely to teach the pupil in question about his or her special needs (the person can be the headteacher, but may be the chair of the governing body or a governor appointed by the governing body with that responsibility);
  - report each year to parents on their policy for pupils with SEN;
  - take account of the Code of Practice when carrying out their duties towards all pupils with SEN.
25. Under the [Education \(Special Educational Needs\) \(Information\) \(England\) Regulations 1999](#), the governing bodies of all schools must publish information about their SEN policies. These policies must be made freely available to parents.

### **ADMISSION OF PUPILS WITH SPECIAL EDUCATIONAL NEEDS: DUTIES OF ADMISSION AUTHORITIES (INCLUDING GOVERNING BODIES)**

26. The School Admissions Code makes clear that all schools should admit pupils with already identified SEN. Admission authorities may not refuse to admit a child because they feel unable to cater for their SEN pupils. Pupils with SEN, but without statements,



must be treated as fairly as all other applicants for admission. Admission authorities must consider applications from parents of children with SEN, but no statement, on the basis of the school's published admissions criteria. Such children should be considered as part of the normal admissions procedures. Admission authorities cannot refuse to admit children on the grounds that they do not have a statement or are currently being assessed.

### Admission of SEN pupils with statements to mainstream schools

27. [Schedule 27 of the Education Act 1996](#) determines whether a parent's preference for a particular maintained school is met. Parents may express a preference for a particular maintained school they wish their child to attend. LAs must comply with a parental preference unless the school is unsuitable to the child's age, ability, aptitude or SEN, or the placement would be incompatible with the efficient education of the other children with whom the child would be educated, or with the efficient use of resources. Once a maintained school is named in a child's statement, the governing body must admit the child under [Section 324\(5\)\(b\) of the Education Act 1996](#).
28. Parents have the right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) if they disagree with the school named in Part 4 of the statement, or with the parts of the statement describing the child's SEN (Part 2) and the special educational help that the LA thinks the child should get (Part 3). Governing bodies do not have a right of appeal to the First-tier Tribunal. Parents can also use the informal disagreement resolution arrangements to resolve issues about the ways in which LAs and maintained schools carry out their responsibilities towards their child.
29. If no parental preference for a particular maintained school has been expressed, [Section 316 of the Education Act 1996](#) (as amended by Section 1 of the [Special Educational Needs and Disability Act 2001](#)) is relevant to the selection of a school. There is a clear expectation under that section that pupils with statements will be included in mainstream schools. LAs have a general duty to ensure that a child is educated in a mainstream school unless this is incompatible with the efficient education of other children or with parental preference. A parent's wish to have their child with a statement educated in a mainstream school should only be refused in the small minority of cases where the child's inclusion would be incompatible with the efficient education of other children.
30. If an LA considers that the education of a particular child in its mainstream schools would be incompatible with the efficient education of others, it must consider whether there are any reasonable steps that it or another LA could take to prevent that incompatibility. If there are such steps, it may not rely on this incompatibility to rule out a placement in a mainstream school. In relation to a particular maintained school, it must consider the reasonable steps that it or another LA could take to prevent the incompatibility. If there are such steps, it may not rely on this incompatibility to rule out a placement in that school. LAs must consult the governing body of a mainstream school before naming it in Part 4 of a statement, and send it a copy of the statement. LAs and governing bodies should respond to consultation in good time, normally within 15 working days. The LA which maintains the statement should consider carefully any representations that it receives from governing bodies or other LAs, but the final decision rests with the LA.

(Further information on admissions is given in the [SEN Code of Practice](#), paragraphs 1:33 to 1:36, and in chapter 12 of this Guide, Admissions.)

### Admission to special schools

31. Most admissions to special schools not established in a hospital are determined by statements of SEN and will reflect parental preference. Once a maintained special school is named in a statement, governors are under a duty to admit the child. Regulation 12A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (as inserted by the [Education \(Special Educational Needs\) \(England\) \(Consolidation\) \(Amendment\) Regulations 2006](#)) specifies the circumstances when a child without a statement of SEN may be admitted to a special school – namely for the purposes of assessment, or following a change in circumstances.

32. Before naming a special school in a statement, LAs must consult the school's governing body (and the home LA, where the school is maintained by another LA). LAs and governing bodies should respond to consultation in good time, normally within 15 working days. The LA that maintains the statement should consider carefully any representations it receives from governing bodies or other LAs. When finalising statements, LAs should consider whether or not the admission of the child would be in keeping with the school's arrangements, i.e. the number, age, sex and SEN of day and boarding pupils for whom the school is organised to make provision.
33. Pupils may only be admitted to a special school established in a hospital where there is a need for hospital treatment.

### Special school organisation

34. The number of pupils for which a school is organised to make provision can be increased by the fewer of 10 per cent or the relevant number of pupils (five where the school only makes boarding provision and 20 in any other case), without the need for publication of statutory proposals (see chapter 18 of this Guide, Organisational changes to the school). It is not intended that LAs should routinely name schools that are already admitting pupils up to their organised number in statements. The provision is intended to offer a degree of flexibility that will allow the occasional additional pupil to be placed at a special school when it is decided this is the most appropriate way forward.

### TEACHERS IN MAINSTREAM SCHOOLS WITH RESPONSIBILITY FOR SPECIAL EDUCATIONAL NEEDS

35. [Section 317 of the Education Act 1996](#) (as amended by Section 173 of the Education and Inspection Act 2006) says that the governing body of a community, foundation or voluntary school or a maintained nursery school shall designate a member of staff at the school – to be known as the special educational needs coordinator (SENCO) – as having lead responsibility for coordinating the provision for pupils with SEN and disabilities.
36. Whilst some of the functions associated with the SENCO may be undertaken by other members of staff, including teaching assistants, the [Education \(Special Educational Needs Co-ordinator\) \(England\) Regulations 2008](#) (SI 2008 NO 2945), laid before Parliament on 21 November 2008, requires that the lead person designated by the governing body as SENCO shall be either a qualified teacher at the school, or the headteacher or acting headteacher.
37. The SENCO Regulations come into force on 1 September 2009, but allow for a person carrying out the SENCO role for at least six months prior to 31 August 2009, who is not a qualified teacher, to continue in-post provided they are taking steps to become so qualified, and that the governing body is satisfied there is a reasonable prospect that they will be able to gain Qualified Teacher Status (QTS) by 1 September 2011.
38. The Regulations also provide that the governing body must determine the key responsibilities of the SENCO and monitor the effectiveness of the way the responsibilities are carried out against a list of illustrative activities, reflecting the SENCO role as described in the SEN Code of Practice (chapter 1, paragraphs 16–22). Governing bodies and headteachers or acting headteachers must think carefully about the SENCO's timetable in light of the SEN Code of Practice, and the resources available to the school.
39. The Training and Development Agency for Schools (TDA) has published a framework of professional standards for teachers setting out the characteristics of teachers at each career stage in terms of their professional attributes, professional knowledge and understanding, and professional skills. The standards cover QTS, teachers on the main scale (Core), teachers on the upper pay scale (Post-threshold), Excellent Teachers (E) and Advanced Skills Teachers (ASTs).
40. To be awarded QTS, trainee teachers must show that they meet all of the professional standards for QTS. Initial Teacher Training providers must ensure that the content, structure, delivery and assessment of their training are designed to enable trainee

teachers to demonstrate that they have met all of the QTS standards. The standard placed on trainees teaching pupils with SEN and disabilities can be found on the [TDA website](#).

41. Continuing professional development (CPD) opportunities are available, covering many aspects of SEN and disabilities. For example, the first phase of the Inclusion Development Programme (IDP) produced training materials for teachers and non-teaching staff designed to increase their knowledge of and confidence in meeting the needs of children with communication difficulties. In 2009 the IDP focuses on autism and, in 2010, on behavioural difficulties. Governing bodies are strongly encouraged to support CPD in their schools.
42. All initial teacher training courses cover meeting the needs of children with SEN and disabilities. The TDA has published national standards for new teachers that expect all newly qualified teachers (NQTs) to be familiar with the [Code of Practice](#), to be able to identify pupils who have SEN, and to know where to get help to give these pupils the support that they need. In-service training (INSET) is available covering many aspects of special education, and governing bodies may wish to encourage teachers to take such training.

### NATIONAL CURRICULUM

43. The national curriculum applies to pupils with SEN, but may be changed or not applied in specific cases (as explained in chapter 6 of this Guide, The curriculum). As part of the General Teaching Requirements of the national curriculum, all teachers must have due regard to a set of principles (the Inclusion Statement), which requires them to:
  - set suitable learning challenges for all pupils;
  - respond to pupils' diverse needs;
  - overcome potential barriers to learning and assessment for individuals and groups of pupils.

### FINANCE

44. Pupils with SEN may require extra help. For pupils attending mainstream schools who require extra help but do not have a statement, normally costs are met from the schools' delegated budgets. In setting school budgets, the LA should take account of the fact that some schools will have more pupils with SEN than other schools. The LA should indicate what part of the school's budget is assumed to be for SEN, although the governing body may choose to spend more or less than this amount on meeting special needs. The governing body should be clear about the LA's policy on providing any extra funding for the extra teaching and support of pupils with statements as well as pupils who do not have statements, but who need support from outside the school.
45. In November 2001, the Department published guidance called *Distribution of Resources to Support Inclusion*, covering approaches to the delegation and distribution of resources, or meeting the needs of pupils with SEN and those with other additional needs in mainstream schools.
46. LAs are required under the [Special Educational Needs \(Provision of Information by Local Education Authorities\) \(England\) Regulations 2001](#) to publish an explanation of their provision for children with SEN (but without statements). The explanation should state what proportion of provision the LA expects to be met from maintained schools' budget shares, and what proportion it expects to be met from funds that it holds centrally.

### EDUCATION OF LOOKED-AFTER CHILDREN (CHILDREN IN CARE)

#### School admissions

47. Under Section 106 of the Education Act 2005 the Government has introduced the Education (Admission of Looked After Children) (England) Regulations 2006, which require admission authorities, with some limited exceptions, to give priority to looked-after

children over other children in their oversubscription criteria. The practical effect of this is that in a school's published admission arrangements, the first and highest oversubscription criterion must be looked-after children.

48. Because looked-after children often move outside the normal admission round, Section 50 of the [Education and Inspection Act 2006](#) amends the School Standards and Framework Act 1998 to give the LA looking after them the right to direct the admission authority of any maintained school to give them a place, even where the school is full, or is in another LA area.

## **UNDERSTANDING THE LEGISLATIVE FRAMEWORK FOR PROMOTING THE EDUCATIONAL ACHIEVEMENT OF LOOKED-AFTER CHILDREN**

### **Schools**

49. Section 20 of The Children and Young Persons Act 2008 places a duty on the governing body of a maintained school to appoint a designated person to promote the educational achievement of looked-after children who are registered pupils at the school. The governing body must ensure that the designated person undertakes the appropriate training necessary to discharge this role. Subsection (3) enables the Secretary of State to make regulations which specify the qualifications and/or experience the designated person should have. Given the importance the Government attaches to closing the gap in the educational achievement between that of looked-after children and all children, these regulations specify that the role should be carried out by a qualified teacher.
50. The Government intends to consult on these regulations and on statutory guidance to governing bodies on the role of the designated person in 2009. The core content of the statutory guidance is likely to be based on the DCSF good practice guidance published in 2005, *Supporting Looked After Learners*, which describes what schools need to do to ensure that school policies and procedures help looked-after children to reach their full potential. In particular, the designated teacher will be expected to ensure that the teaching and learning needs of the looked-after child is reflected in his or her Personal Education Plan (PEP), which forms part of his or her education record under the Education (Pupil Information) (England) Regulations 2005.
51. The regulations on the qualifications and experience of the designated teacher, supported by statutory guidance, are expected to come into force in September 2009. As the role of the designated teacher has already been developed in many schools as a matter of good practice, governing bodies are, therefore, encouraged to consider what plans they should be making ahead of the commencement of Section 20 of the Children and Young Persons Act and the accompanying regulations and statutory guidance.

### **The role of the local authority**

52. Schools have a key role in promoting the educational achievement of looked-after children. LAs also have a duty to promote the educational achievement of the children they look after, either where they are accommodated or on a full care order. Section 52 of the Children Act 2004, which amends Section 22 of 1989 the Children Act, places a duty on LAs to promote the educational achievements of children looked after by them, wherever they are placed. This means they must give particular attention to the educational implications of any decision about the welfare of those children.
53. *Statutory Guidance on the Duty of Local Authorities to Promote the Educational Achievement of Looked-after Children* describes the essential actions that LAs are expected to take in order to comply with their duty. Key features of this are summarised in the table below.

### The looked-after children framework

Framework for supporting the education of looked-after children	Essential actions
<b>Time limits within which to secure educational placements for looked-after children without a school place</b>	LAs should ensure that, except where a child is placed in an emergency, arrangement of a suitable education placement is made at the same time as the care placement. Unless unsuitable for the child's circumstances, this means full-time education at a local mainstream school. Where a care placement has been made in an emergency and suitable education has not been secured or breaks down, LAs must secure a suitable education placement within 20 school days.
<b>Personal Education Plans (PEPs)</b>	LAs should ensure that every child and young person looked after by the LA has an effective, high-quality PEP that is available for discussion at the first statutory review meeting of the care plan (28 days). The PEP is part of the care plan that all looked-after children must have, and is a record of what needs to happen to help looked-after children meet both their short-term and long-term educational goals. The PEP is a key tool for identifying and meeting the educational needs of looked-after children and should be reviewed on a six-monthly basis.
<b>Designated teachers in schools</b>	Designated teachers in schools should act as a resource and champion for looked-after children, liaising with Social Services and other key partners on behalf of looked-after children in the school.
<b>Cooperation with schools</b>	LAs should work closely with schools, and in particular the designated teacher for looked-after children, to ensure that the actions and activities recorded in the PEP are properly resourced and acted upon. The child's social worker should take the lead to initiate the PEP but is expected to work with the child's school (especially the designated teacher) in developing PEP content.
<b>Training</b>	LAs should arrange suitable training for designated teachers and school governors covering all aspects of the care system and its impact on the education of looked-after children.
<b>Sharing information effectively</b>	LAs should ensure that arrangements are in place for sharing up-to-date, reliable data so that LAs, schools and other agencies can fulfil their statutory responsibilities to meet the educational needs of looked-after children.

### Promoting the educational achievement of looked-after children

54. The Government expects schools to take a proactive approach to cooperating with and supporting LAs in discharging the duty, so that looked-after children receive the support that they need to achieve and succeed. Schools and governors should ensure that school policy and procedure are consistent with measures set out in the statutory guidance on the duty. The DfES booklet *Supporting Looked After Learners* provides practical guidance to governing bodies on the policies and procedures that will help their looked-after children to achieve their potential. (A summary of the looked-after children framework is given above.)
55. Many schools have appointed a designated teacher for looked-after children. The designated teacher is responsible for raising the attainment of looked-after children by leading the work of colleagues to ensure that provision is in place to aid continual progress. It is therefore important that the LA ensures that designated teachers have an

up-to-date copy of the looked-after child's PEP. The PEP forms part of his or her education record under the [Education \(Pupil Information\) \(England\) Regulations 2005](#).

56. Subject to parliamentary approval, the forthcoming Children and Young Persons Bill will make it a statutory requirement for all maintained schools to appoint a designated person for looked-after children. Given the central importance of the quality of teaching and learning provided to all children in care and its impact on their achievement, the Government intends to specify that this role should be carried out by a teacher.

### **SICK CHILDREN**

57. LAs have a duty to provide suitable education for children of compulsory school age who cannot attend school due to illness or injury. This education might be provided in a number of ways, for example in hospital schools, in pupil referral units, at home or through a combination of these. Mainstream schools have a vital part to play in supporting the education of sick children on their roll.
58. In November 2001 the Department for Education and Skills (DfES), jointly with the Department of Health, published statutory guidance called [Access to Education for Children and Young People with Medical Needs](#), which sets out national minimum standards of education for children who cannot attend school because of illness or injury. A four-page summary is also available. The guidance states that all mainstream schools should have a written policy and procedures for dealing with the education of children with medical needs.
59. Governors need to ensure that such a policy is in place and that there is close liaison between teachers and the LA or hospital and home tuition service, so that programmes of work are available to pupils, social contacts are maintained and the school is able to assist successful reintegration.
60. The Department has also published the research report [Access to Education for Children and Young People with Medical Needs](#), which includes tools to help mainstream teachers evaluate their practice in this area (see the Guidance section, below).

### **MENTAL HEALTH IN SCHOOL SETTINGS**

61. There is increasing evidence that schools can promote mental health for all children and intervene effectively with those children experiencing problems. In June 2001 the Department issued the guidance [Promoting Children's Mental Health within Early Years and School Settings](#), which is designed to help teachers and others working alongside mental health professionals to promote children's mental health and to intervene effectively where necessary. Governors should be aware of and promote this guidance, which also includes case studies. (The guidance and a summary are available on the children and young people's mental health pages on the [TeacherNet website](#).)

### **DISABILITY DISCRIMINATION**

62. The definition of disability used in the [Disability Discrimination Act 1995](#) is wide and could include a significant proportion of, although not all, children with SEN (see chapter 17 of this Guide, Equal opportunities and school governors).
63. The [Special Educational Needs and Disability Act 2001](#) amended the [Disability Discrimination Act 1995](#) to include education in schools. The new duties on LAs and schools came into force on 1 September 2002. The amendments placed a duty on schools not to discriminate against disabled pupils or prospective pupils on the grounds of disability. They also placed a duty on LAs and schools to plan to increase access to education for disabled pupils over time (see chapter 17 of this Guide, Equal opportunities and school governors).
64. The Disability Rights Commission, now part of the Equality and Human Rights Commission (EHRC), produced the guidance [Code of Practice for Schools](#), explaining

their duties under [Part 4 of the Disability Discrimination Act 1995](#) (see the Guidance section, below).

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

[The Education \(SENCO\) \(England\) Regulations 2008 \(SI 2008 No 2945\)](#)

[The Education Act 1996: Part 4](#)

[The Disability Discrimination Act 1995: Part 4](#)

[The Special Educational Needs and Disability Act 2001](#)

[The Special Educational Needs and Disability Act 2008](#)

[The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001: SI 2001/3455](#)

[The Education \(Special Educational Needs\) \(England\) \(Consolidation\) \(Amendment\) Regulations 2006: SI 2006/3346](#)

[The Education \(Special Educational Needs\) \(Information\) \(England\) Regulations 1999: SI 1999/2506](#)

[The Special Educational Needs \(Provision of Information by Local Education Authorities\) \(England\) Regulations 2001: SI 2001/2218](#)

[The Education \(Pupil Information\) \(England\) Regulations 2005: SI 2005/1437](#)

## GUIDANCE

[Explanatory Note for Governing Bodies](#)

The purpose of this note is to explain the regulatory provisions to governing bodies of community, foundation, voluntary and maintained nursery schools under Section 317 of the Education Act 1996 (as amended by Section 173 of the Education and Inspection Act 2006)

[Special Educational Needs Code of Practice \(DfES 2001, Ref: DfES/0581/2001\)](#)  
[SEN Toolkit \(DfES, 2001, Ref: DfES/0558/2001\)](#)

[Access to Education for Children and Young People with Medical Needs \(DfES 2001, Ref: 0732/2001\)](#)

[Promoting Children's Mental Health within Early Years and School Settings \(DfES 2001, Ref: 0112/2001\)](#)

[Special Educational Needs: A Guide for Parents and Carers \(DfES 2001, Ref: DfES/0800/2001\)](#)

[Special educational needs and disability pages on TeacherNet](#)

[Special Educational Needs: How to Appeal \(Ref: TRI 022: for a copy, tel. 0870 241 2555\)](#)

[Disability Discrimination in Schools: How to Make a Claim \(Ref: HTC 001: for a copy, tel. 0870 606 5750\).](#)

[Code of Practice for Schools \(For copies, tel. 08457 622 633 or from the \[EHRC website\]\(#\)\)](#)

Answering a Claim of Disability Discrimination: A Guide for Responsible Bodies (Ref: DIS 2)

Statutory Guidance on the Duty on Local Authorities to Promote the Educational Achievement of Looked After Children under Section 52 of the Children Act 2004 (Ref: 2083-2005DOC-EN: copies can be downloaded from the [Education Protects website](#))

Supporting Looked After Learners: A Practical Guide for School Governors (DfES 2005, Ref: 1929-2005DOC-EN: copies can be downloaded from the [Education Protects website](#))

Accessible Schools: Planning to Increase Access to Schools for Disabled Pupils (DfES 2002, Ref: LEA/0168/2002)

Distribution of Resources to Support Inclusion (Ref: LEA/080/2001)

Copies of guidance listed above (unless otherwise indicated) can be obtained from DCSF Publications (tel: 0845 602 2260 or email: [dcsf@prolog.uk.com](mailto:dcsf@prolog.uk.com)), quoting the document reference.



# 8 THE SCHOOL BUDGET

## CHAPTER SUMMARY

**This chapter outlines the way in which Local Authorities (LAs) receive and distribute funding for schools. It also identifies the key areas of expenditure that governing bodies have responsibility for and the circumstances under which a governing body may lose its right to a delegated budget.**

### SCHOOL FUNDING

1. The vast majority of schools' income comes via central government grants paid to LAs. This means that there is no requirement for LAs to contribute to school funding from local taxation, although they are free to do so if they choose to. The main grant that LAs receive for schools is called the Dedicated Schools Grant (DSG).
2. Schools are free to raise extra funds through voluntary contributions from parents and others, or through a variety of activities such as renting out school premises or running additional activities that generate income. When considering the types of activities a governing body wishes to run, the governing body must ensure that its budget share is not used to subsidise, or in any other way contribute to, the costs of activities that are not for any purposes of the school. [Section 50\(3\)](#) of the School Standards and Framework Act 1998 (SSFA) states:  
  
Subject to any provision made by or under the scheme, the governing body may spend any such amounts as they think fit:
  - (a) for any purposes of the school; or
  - (b) (subject also to any prescribed conditions) for such purposes as may be prescribed.
3. Where a governing body enters a contract to provide the facilities of the school or to provide a service to the pupils, families of pupils and the local community (which would be deemed as a "charitable purpose" as described under [Section 27\(1\)\(b\) of the Education Act 2002](#)) then the governing body must ensure, as in paragraph 2 above, that its budget share is not used to subsidise or in any way contribute to the costs of the contract or the provision of facilities or service.
4. The phrase "for any purposes of the school" is not further defined. However, the [School Budget Shares \(Prescribed Purposes\) Regulations 2002](#) additionally allow spending for the purposes of pupils in other schools. [Section 50\(4\)](#) of the SSFA provides that "purposes of the school" does not include purposes wholly referable to community facilities. Further guidance on these matters can be found in chapter 23 of this Guide (Charging for school activities).
5. The DSG is paid to LAs (not directly to schools) as they have responsibility for the distribution of funding to individual schools in their local area.

### Advance budget allocation

6. From April 2006, LAs have been required to provide schools with a budget allocation for the coming year, plus an indication of what their budget will be for up to the two following years. Each multi-year period over which budgets are allocated and notified to schools will follow the pattern determined nationally by the Treasury's Spending Review cycle.
7. So, for example, in April 2008 schools were in receipt of a budget for 2008–09 plus an indication of what their budget will be in 2009–10 and 2010–11. Before April 2009, this indicative budget will be firmed up to provide schools with their actual allocation for 2009–10. Prior to the start of each year within this multi-year period, the notified budget will be firmed up in order to finalise the actual allocation a school will receive for that particular year.

## 8. THE SCHOOL BUDGET

8. LAs are required to calculate the budgets of all schools maintained by them using a funding formula and to set the framework for the financial relationship that operates between them and the schools they maintain. Under this arrangement a large degree of management responsibility for the running of schools is delegated to governing bodies.
9. Each LA's formula is governed by national Regulations and is designed to bring about an equitable allocation of resources between schools, based on objectively measured needs. Therefore, within each LA area, schools with the same characteristics and the same number of pupils receive the same level of financial resources under the LA's formula.
10. The school funding system is based on the legislative provisions in [Sections 45–53](#) of the SSFA, and except where specified otherwise, references in this section to statutory provisions are references to the 1998 Act. Under this legislation (which was amended in some respects by [Sections 41–43](#) and [Section 45](#) of the Education Act 2002, by [Section 101](#) and [Schedule 16](#) of the Education Act 2005 and by [Section 57](#) and [Schedule 5](#) of the Education Act 2006), LAs determine the size of their LEA Budget and Schools Budget.
11. The “LEA Budget” and “Schools Budget” are the names given to the component parts of an LA's total spending on education. The LEA Budget covers the strategic management function, while the Schools Budget includes all the funding that is spent on pupil provision in the form of delegated budgets to schools and LA-retained funding for provision, such as pupil referral units and high-cost special educational needs (SEN). In line with the requirement to provide schools with multi-year budgets, LAs are required to set the size of their Schools Budget for each year of a multi-year period.
12. The size of an LA's Schools Budget for any year in the multi-year period must be at least that of the DSG plus any funding an LA receives from the Learning and Skills Council (LSC) for post-16 provision in maintained schools. However, LAs are able to add from their own locally raised resources if they choose to. Unlike the Schools Budget, an LA's LEA Budget is part of the general local government settlement and is funded through a combination of central government grant and local taxation.
13. The types of activity or expenditure that resources in the LEA Budget and the Schools Budget can support are prescribed by Regulations (currently the School Finance (England) Regulations 2008) made by the Secretary of State for Education and Skills under [Section 45A](#) of the SSFA. Included within this is all expenditure, direct and indirect, on an LA's maintained schools (including maintained nursery schools), pupil referral units and the free entitlement to early years provision for three and four year olds in all providers. Expenditure in the LEA Budget is incurred by the LA itself. In addition, LAs may retain some funding centrally within their Schools Budget for purposes defined in the same Regulations.
14. The amounts to be retained centrally within the Schools Budget are decided by each LA to reflect local circumstances, but are subject to certain limits and conditions prescribed by the Secretary of State for Education and Skills. Since April 2006, a local Schools' Forum has been able to agree to relax or vary some of these limits. Where the Schools' Forum does not agree, the Secretary of State will retain the power to agree such changes where he or she feels it appropriate. The balance of the Schools Budget left after deduction of centrally retained budget is termed the Individual Schools Budget (ISB).
15. LAs must distribute the whole of their ISB among their maintained schools using a formula that accords with the School Finance Regulations made by the Secretary of State for Education and Skills under [Section 47](#) of the SSFA and enables the calculation of a budget share for each maintained school. Schools will receive notification of the size of their budget share for each year of a multi-year period, but as each year for which a budget has been notified approaches, it will be updated to reflect, at the very least, pupil-number changes. The extent to which other elements of a school's indicative budget will be updated once notified (for example, funding for deprivation, SEN and so on) will be dependent on provisions within each LA's formula, which will have been developed in consultation with (and since April 2006, in some cases only by the agreement of) its Schools' Forum.

16. The budget share of a school for the actual year being funded is then delegated to the governing body of the school concerned, unless the school is a new school which has not yet received a delegated budget, or the right to a delegated budget has been suspended in accordance with [Section 51](#) of the SSFA. The financial controls within which delegation works are set out in a scheme for the financing of schools made by the LA in accordance with [Section 48](#) of the SSFA. All revisions to the scheme must also be consulted on with all schools and agreed by the Schools' Forum.
17. Schools with a delegated budget may spend budget shares for "the purposes of the school" as stated in [Section 50\(3\)](#) of the SSFA. This is usually taken to be for the educational benefit of the school's pupils. Schools may also spend budget shares on any additional purposes prescribed by the Secretary of State for Children, Schools and Families in Regulations made under [Section 50](#) of the SSFA. Schools may accumulate savings and carry them forward, but any deficit balances must also be carried forward. Since January 2007, all LAs have had, within their Section 48 scheme, provisions that enable excess surplus balances to be forfeited unless the LA is satisfied that they are assigned to a designated project.
18. An LA may suspend a school's right to a delegated budget if the provisions of the school financing scheme (or rules applied by the scheme) have been substantially or persistently breached, or if the budget share has not been managed satisfactorily.
19. Under [Section 52](#) of the SSFA each authority is obliged to publish a statement setting out details of its planned LEA Budget and Schools Budget each year. In the case of the Schools Budget for each year of a multi-year period, it must show the amounts that will be centrally retained and the budget share for each school, the formula used to calculate those budget shares and the detailed calculation for each school. After each financial year, the authority must publish a statement showing outturn expenditure at both central level and for each school, as well as the balances held in respect of each school. Information in both types of statement will be collated and published by the Secretary of State for Children, Schools and Families. From April 2006, there has been an annual issue of separate statements for budget and outturn by the Department for the LA's Chief Financial Officer to certify the deployment of the DSG.
20. The detailed publication requirements for financial statements and for schemes are set out in the Regulations made under [Sections 52](#) and [48](#) of the SSFA respectively. Each school must receive a copy of the scheme and any amendment, and each year's budget and outturn statements.
21. From 2002–03 schools have also been obliged to submit annual income and expenditure returns to the Secretary of State for Children, Schools and Families in conformity with the Consistent Financial Reporting framework.

### **Repairs and maintenance**

22. These costs will normally be paid from the school's revenue budget share, unless expenditure on the work in question is treated by the LA as being capital expenditure. The distinction between capital and revenue is made in accordance with standard accounting practice, including a de minimis limit below which items should not be treated as capital. LA accountants should be consulted in cases of doubt.

### **School meals**

23. The duty to provide free meals to eligible pupils and paid lunches on request, and to comply with national nutritional standards, rests with the LA. However, an order has been made under [Section 512A of the Education Act 1996](#) which has the effect of transferring duties to the governing body when funding is delegated. When the governing body has such duties, it may make provision through arrangements it has negotiated, or by buying back into an LA catering service. However, buying back into an LA catering service does not shift the legal duty of provision back to the LA. Governing bodies with meal responsibilities should ensure that meal providers are competent to deal with the various health and safety and other food safety issues that arise in meal provision.

### **Loss of the right to a delegated budget**

24. An LA may suspend a school's right to a delegated budget under certain circumstances. [Schedule 15](#) of the SSFA, as applied by [Section 51](#), provides that suspension may take place if a school's governing body has persistently or substantially breached a requirement or restriction relating to its delegated budget, or has not managed its budget share satisfactorily. The LA must send a copy of the notice to the governing body and the headteacher. The LA is required to review the suspension within a certain period (or may do so earlier if it wishes).
25. The principal effect of suspension of the right to a delegated budget is that the governing body loses the right to decide on how the budget should be spent (except to a limited extent if the LA so decides), and loses most staffing powers. An LA may also suspend the right to a delegated budget for reasons arising from the powers in Part 4 of the Education and Inspections Act 2006: [Sections 59–66](#) (which allow an LA to intervene in schools causing concern). Such suspensions have the same effect.
26. Loss of a delegated budget is a rare event and should remain so, because schools and LAs ought to discuss any problems that might lead to suspension. They should also seek to rectify any problems before the need for formal action arises. Schools should therefore co-operate with LA monitoring designed to identify financial problems and take a positive approach to their resolution.

### **Purchase of legal advice**

27. LAs are not able to retain funding centrally for the provision of legal advice that schools may need access to, but schools may, if they wish, buy the service back from the LA. In situations where the school may need to seek alternative sources of legal advice, the LA's scheme for financing schools specifies which alternative arrangements should be made.

### **Liability of governing bodies**

28. By virtue of [Section 50\(7\)](#) of the SSFA, governors do not incur any personal liability in respect of anything done in good faith in exercising their power to spend a school's budget share, or delegating that power to the headteacher. An example of an act not done in good faith is fraud.

### **Insurance**

29. The LA's duty to maintain the school includes meeting the cost of insurance. Historically, VA governing bodies have taken out insurance policies intended to meet 10 per cent of replacement costs, with the remaining 90 per cent of rebuilding met by DCSF through a grant. This grant is no longer available and all schools and authorities are advised to consider 100 per cent insurance. Although there are various categories of insurance, the principal items relate to the protection of buildings and liability insurance. If a school wishes to, it may request delegated funds, so as to make its own arrangements for insurance. In such cases the LA may specify the minimum cover required. Alternatively, the LA may decide to delegate all or some insurance funding to schools generally, and a school may either buy back into an LA arrangement or make alternative provision. Again, the LA may specify the minimum cover required and normally has power to secure such cover and charge the budget share of the school if the governing body does not obtain satisfactory insurance; there is no requirement that the amount delegated should exactly match the cost of securing insurance.

### **Best Value**

30. The Government has introduced Best Value, a regime under which LAs are obliged to review their services and expose themselves to competitive pressure on a cyclical basis. School governing bodies are not under a direct duty to secure Best Value, but LAs' schemes for financing schools require governing bodies to demonstrate, in their annual budget plan, that they have followed Best Value principles in drawing up that plan.

### Financial Management Standard in Schools (FMSiS)

31. The purpose of the FMSiS is to tighten the management of resources in schools and provide assurance to authorities and the Department that schools have adequate arrangements in place. The National Audit Office pressed for better assurance on this front when the DSG was introduced, but accepted that the Standard would have to be phased.
32. In the first wave, all secondary schools were expected to meet the Standard by 31 March 2007. On 6 March 2007, ministers agreed to a phased timetable for the introduction of the Standard to the primary, middle and special school sectors:
- 40 per cent of primary, middle and special schools to have met the standard by March 2008;
  - a further 40 per cent of primary, middle and special schools by March 2009; and
  - all remaining schools by March 2010.

Local authorities are responsible for deciding the order in which they seek to bring their schools up to the Standard.

33. One of the conditions of receiving a DSG is that the LA's CFO must sign a declaration with the Section 52 outturn statement indicating whether a school meets the Standard or needs to take appropriate action to do so.
34. The Standard encourages schools to make better use of their existing resources to improve children's outcomes. It sets out best practice for effective financial management in schools and helps school leaders and governing bodies to understand their roles and responsibilities as financial managers. It also explains how decisions on expenditure are linked to educational priorities. The Schemes for Financing Schools include a provision allowing LAs to specify how they expect schools to demonstrate their compliance with the FMSiS.

For more information, go to the FMSiS website at [www.fmsis.info](http://www.fmsis.info)

### THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The School Standards and Framework Act 1998: Sections 43–53 and Schedules 14 and 15 (as amended by Sections 41–43 and 45 of the Education Act 2002)

Section 101 and Schedule 16 of the Education Act 2005 and Section 57 and Schedule 5 of the Education Act 2006

The School Finance (England) Regulations 2008: SI 2008/228

The Education (Budget Statements) (England) Regulations 2008: SI 2008/377

The Education (Outturn Statements) (England) Regulations 2007: SI 2008/1575

The Education (Transfer of Functions Concerning School Lunches, etc.) (England) (No.2) Order 1999: SI 1999/2164

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# 9 SCHOOL PREMISES AND CAPITAL INVESTMENT

## CHAPTER SUMMARY

School land and buildings are important public assets. The replacement value of school buildings alone is £130 billion.<sup>1</sup> By 2010, £8 billion a year of capital will be being invested to improve them. Governors have a range of legal and other responsibilities, depending on the category of school, for:

- capital investment
- building projects
- maintaining buildings and land.

VA There are particular provisions which apply to investment at voluntary aided schools as a consequence of the Education Act 1944, as subsequently amended. These are discussed separately below.

### LAND AND BUILDINGS

1 VA VC F The land of community schools is owned by the Local Authority (LA). The land at foundation schools is owned by the governing body or trustees. Land at voluntary schools is usually owned by trustees, although the LA will often own the playing field land.

2. School land is usually in freehold ownership, but leasehold interests are possible.

3. In the majority of schools procured through private finance initiatives (PFI), the buildings are funded by a private-sector contractor and are then operated and maintained by that contractor for an agreed period, typically 25 years. In these cases, it is usual for the contractor to be granted either a lease or an operating licence covering the buildings for the duration of the contract; the buildings then revert to the LA at the end of the term. The LA, the governing body or the trustees, as the case may be, retain the freehold interest throughout.

4. These contracts will remain in force even if the LA transfers its interest in the school land to the governing body where it changes status. The LA's interest in such a case is the freehold and the provision for the buildings to revert at the end of the contract term.

5. F Governing bodies will acquire the ownership of their school land where they change category to foundation status if there are no trustees. It is the duty of the LA to transfer its interest in the land to the trustees of the school (or if the school has no trustees, the governing body) where it changes category.<sup>2</sup> Where a foundation school acquires a foundation ("a Trust") and becomes a Trust school, the interest in the land will transfer to the trustees. Where there is disagreement on what land will transfer, the [Schools Adjudicator](#) will determine.

### Disposal and protection of publicly funded school land

6. VA VC F From 25 May 2007 the governing body of a foundation or voluntary school no longer requires the Secretary of State's consent to dispose of surplus non-playing field land or school buildings which have been acquired or enhanced in value by public funding. The governing body is required to notify the LA of its proposals and seek local agreement on them. Where there is no local agreement, the matter can be referred to the Schools Adjudicator to determine. (Details of the new procedure can be found in the Department for Children, Schools and Families (DCSF) published guidance [The Transfer and Disposal of School Land in England: A General Guide for Schools, Local Authorities and the Adjudicator.](#))

<sup>1</sup> Estimate based on Local Authority asset surveys, 2006.

<sup>2</sup> See [Schedule 6](#) to the School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007: SI 2007/1289 (as amended).

### Playing field land

7. Particular protection has been given to school playing field land. Where the governing body of any maintained school<sup>3</sup> or trustees of a foundation, voluntary or foundation special school wishes to dispose or change the use of any surplus school playing field land which has been acquired and/or enhanced at public expense, it will require the Secretary of State's prior consent, under [Section 77 of the School Standards and Framework Act 1998](#). (Further information can be found in the Department's published guidance, *The Protection of School Playing Fields and Land for Academies 2007*.)
8. There are some limited circumstances in which approval has been delegated: these are specified in the [Schedule to the School Playing Fields General Disposal and Change of Use Consent \(No.3\) 2004 Order](#). The governing body, or trustees disposing or changing use of the land, can award a general consent and then provide the Department with specific information. (Further information can be found in [Mukund Patel's letter of 17 July 2007](#).) A governing body, foundation body or trustees must first notify the LA before providing the Department with the required information.

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### Discontinuance of a foundation or voluntary school

9. When a foundation or voluntary school is to be discontinued, the governing body, foundation body or trustees are required, under [Part 2 of Schedule 22 to the School Standards and Framework Act 1998](#), to apply to the Secretary of State to exercise his or her powers in relation to any land held by them for the purposes of the school which was acquired or enhanced at public expense. The Secretary of State may make a direction as to what should happen to such land when the school is discontinued.

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### CAPITAL FUNDING

10. Annual [capital funding](#) is allocated to LAs and to schools. It can be used to build and improve school premises and for other capital purposes, including the provision of information and communication technologies (ICT). It is allocated to schools and LAs by needs-related formulae, and expenditure priorities are determined locally. LAs and schools can also use funding from other sources, including revenue funding and prudential borrowing, to maintain and invest in their buildings and assets.
11. The major government funding streams for LAs are Modernisation, [New Pupil Places](#) (also known as Basic Need), and the [Schools Access Initiative](#). [Devolved Formula Capital](#) is allocated via LAs for schools' own use. Capital funding is also available for:
- projects which support the diversity and inclusion agendas (for example, to provide kitchens where currently there is none);
  - projects which support the expansion of successful and popular secondary schools;
  - schools which acquire a specialism; and
  - those which have sustainable transport plans agreed.
12. [Building Schools for the Future](#) aims to rebuild or renew all secondary schools which have not been replaced by existing funding streams or through the Academies programme. The first authorities were able to access funding in 2005–6. Announcements have been made of the first six waves of investment, prioritised on the average educational and social need of groups of schools proposed by authorities.
13. From 2008–9, additional funding is available to authorities for the [Primary Capital programme](#), which aims to renew at least 50 per cent of primary schools over 14 years, subject to future spending plans.
14. Maintained schools of any category may not enter into contracts which involve borrowing without the consent of the Secretary of State for Children, Schools and Families (the [Education Act 2002](#)). In practice, because borrowing scores directly against the

<sup>3</sup> Section 77(7) has been amended by the Education and Inspections Act 2006, so as that "maintained school" now includes "maintained nursery school".



Department's budget and is rarely good value for money, usually permission to borrow is not given. Where there is doubt on the nature of a contract, particularly regarding leasing plans, advice should be sought from the LA.

15. The DCSF relies upon LAs to prioritise how their formulaic funding is spent. Similarly, schools prioritise how they spend their [Devolved Formula Capital](#). The normal spending rules apply: that is, capital allocations can be used only for a capital purpose; allocations for specific projects must be spent on those projects; and there are time limits within which allocations must be spent depending on the type of funding provided. Other conditions of funding may apply.
16. More detailed guidance on each type of allocation for the period 2008–09 to 2010–11, how it is determined and how it must be spent, is available on the [DCSF website](#).

### Value added tax (VAT)

17. The DCSF cannot give guidance on matters relating to liability for value added tax (VAT) on investment or building projects. LAs cannot reclaim VAT on capital expenditure for voluntary aided schools: this is because the LA has no statutory responsibility for capital expenditure for voluntary aided schools.

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### INVESTING IN SCHOOL BUILDINGS

18. The [Building Regulations](#) (principally made up of the [Building Regulations 2000](#) and the [Building \(Approved Inspectors etc.\) Regulations 2000](#)), which set standards for the design and construction of buildings, apply to all buildings including schools and are given legal status under the Building Act 1984. The Department for Communities and Local Government (DCLG) is responsible for setting these standards, which are mainly to ensure the safety and health of people in or around buildings, but also cover energy conservation and accessibility. The Regulations apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic, commercial or industrial.
19. The DCLG publishes guidance on meeting the requirements of the Building Regulations in what are known as "[Approved Documents](#)". Some of these Approved Documents refer to the standards in the DCSF's Building Bulletins as a satisfactory means of meeting the requirements of the Regulations in school buildings.

Further information on the Building Regulations is available on the government [Planning Portal](#). General public users and professional users can access building regulations guidance, including the Approved Documents and associated guidance. The building owner's agent (usually the architect or private-sector contractor) will ensure on their behalf that school building projects comply with the Building Regulations

In addition there are Regulations which apply to maintained schools – the Education (School Premises) Regulations 1999 (see below).

### Education (School Premises) Regulations

20. LAs must ensure that maintained schools in England and Wales comply with the [Education \(School Premises\) Regulations 1999](#). The current regulations, which came into force on 1 February 1999, set minimum standards for the premises of all existing and new schools maintained by an LA in England and Wales: that is, to community, community special, foundation, foundation special and voluntary schools. Independent schools including Academies and City Technology Colleges have to meet the requirements of the [Education \(Independent School Standards\) \(England\) Regulations 2003](#).
21. Minimum areas of team game playing fields must be provided in schools with pupils over the age of eight years. This applies to all maintained schools, including special schools, with pupils over the age of eight years but does not apply to pupil referral units. It should be borne in mind that the minimum requirements for the provision of team game playing fields are just that – the minimum requirement. They are not a target to which existing team game playing fields should be reduced.

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22. Team game playing fields are defined as “playing fields which, having regard to their configuration, are suitable for the playing of team games and which are laid out for that purpose”. They may include hard games courts, tennis courts, grass and all-weather artificial pitches. Playgrounds may also be considered to be team game playing fields, provided that they are set out for team games, that is:

- netball
- basketball
- tennis
- five-a-side soccer
- hockey
- volleyball
- rounders, or
- other team games normally played on marked out pitches or courts.

Playgrounds or other play areas that include play equipment do not count as team game playing fields. Team game playing fields need not be grass. However, the grassed part of any team game playing fields must be capable of sustaining the playing of team games by pupils at each school for seven hours per week per school during term time. Rotation to allow grass to recover may mean that the markings of team game pitches require adjustment from time to time.

23. The responsibility for ensuring that a school complies with the minimum statutory team game requirement rests with the school’s maintaining LA. In cases where the minimum standards cannot be met, the maintaining LA will need to make an application to the Secretary of State to relax the statutory requirement.

### **ARRANGEMENTS FOR FUNDING PREMISES-RELATED WORK AT VOLUNTARY AIDED SCHOOLS**

24. The arrangements for funding premises-related work at voluntary aided schools were changed by the [Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002](#).

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#### **Capital Grant**

25. The standard rate of grant support to voluntary aided school governing bodies from the DCSF is 90 per cent. LAs have the power to help voluntary aided school governing bodies with their 10 per cent contributions. In exceptional circumstances the DCSF has the power to pay grant at up to 100 per cent.

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Further information on capital funding for voluntary aided schools is available at [TeacherNet](#).

#### **Provision of school sites at voluntary aided schools**

26. Who should provide the site for a new voluntary aided school is determined by the reasons for purchase. In cases of non-statutory transfers and non-significant enlargements, the LA provides the site. Where there is a competition to establish a new primary or secondary school, and the competition is won by a voluntary aided school, if the site is to be established on the site proposed by the LA, the LA must provide the site and should convey this to the trustees of the proposed voluntary aided school ([Schedule 2 to the Education and Inspections Act 2006](#)).

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27. Where a site is required to implement statutory proposals for a prescribed alteration, such as a transfer of site or expansion, the duty to provide the site is on the governing body (Paragraph 40C of Schedules 3 and 5 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended). However, the LA may use its powers to help the governing body in buying a site, or can provide a site or building free of charge (Paragraph 40E of Schedules 3 and 5 to the [School Organisation](#)

(Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended).

### Loans to voluntary aided school governing bodies

28. **Paragraph 7 of Schedule 3 to the School Standards and Framework Act 1998** provides that the Secretary of State may grant an interest-bearing loan towards the cost of any initial expenses required in connection with the school premises on application by:

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- the governing body of a voluntary aided school
- a diocesan authority
- school trustees acting on behalf of the governing body
- the promoters of a new voluntary aided school.

The circumstances in which approval would be given are very limited.

### Proceeds from sale of assets: voluntary aided schools

29. The arrangements for dealing with sale proceeds released as a result of a building project funded by capital grant are set out in the **Education (Grants in respect of Voluntary Aided Schools) Regulations 1999** and the **Education (Grants in respect of Voluntary Aided Schools) (Amendment) (England) Regulations 2002**.

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30. The above Regulations set out the arrangements whereby the sale proceeds, released as a result of a building project funded by capital grant, will be deducted from the governing body's expenditure. The DCSF applies this policy in all cases where proceeds accrue, or are expected to become available, to the trustees, governing body or promoters. More information on proceeds of sale can be found under "Sale of Assets" on the TeacherNet website.

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### USEFUL RESOURCES FOR FURTHER INFORMATION

Her Majesty's Revenue & Customs (HMRC): [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

The HMRC VAT National Advice Service handles general telephone enquiries on 0845 010 9000. Written queries can be sent to:

Policy Adviser, CT & VAT  
Supply of Services & Public Bodies  
HM Revenue & Customs  
3C/10  
100 Parliament Street  
London SW1A 2BQ

Tel: 0207 147 0032

Fax: 0207 147 0097

### THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The Building Regulations 2000: SI 2000/2531

Building (Approved Inspectors etc.) Regulations 2000: SI 2000/2532

The Education Act 2002

The Education and Inspections Act 2006

The Education and Inspections Act 2006: Schedule 22 and Section 77 as amended by the Act

[The Education \(Grants in respect of Voluntary Aided Schools\) Regulations 1999: SI 1999/2020](#)

[The Education \(School Premises\) Regulations 1999: SI 1999/0002](#)

[The Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002: SI 2002/906](#)

[The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2007 \(as amended\): SI 2007/1298](#)

[The School Standards and Framework Act 1998: Sections 43–53 and Schedules 14 and 15 \(as amended by Sections 41–43 and 45 of the Education Act 2002 and Section 101 and Schedule 16 of the Education Act 2005\)](#)

## **GUIDANCE**

[Building Regulations on the Communities and Local Government website](#)

[Building Schools for the Future on TeacherNet](#)

[Capital Funding guidance on TeacherNet](#)

[Capital Funding for Voluntary Aided \(VA\) schools in England \(2006–07 version, also known as the Blue Book\) guidance on TeacherNet](#)

[Disability Discrimination Act guidance on TeacherNet](#)

[Disposal of Playing Fields, Mukund Patel's letter of 17 July 2007](#)

[Health and safety in schools guidance on TeacherNet](#)

[Primary Capital Programme on TeacherNet](#)

[Planning Portal, the Government's online planning and building regulations resource for England and Wales](#)

[The Protection of School Playing Fields and Land for Academies July 2007](#)

[The School Premises Regulations, review and guidance on TeacherNet](#)

[The Office of the Schools Adjudicator](#)

[The Transfer and Disposal of School Land in England: A General Guide for Schools, Local Authorities and the Adjudicator](#)

# 10 STAFFING

## CHAPTER SUMMARY

This chapter explains the staffing powers and employment law responsibilities of the governing body of a school with a delegated budget. When a school's delegated budget is suspended, most of these powers and responsibilities are lost. Decisions about staffing are both important and complex, and governing bodies should make sure that they make full use of the advice available to them.

## BACKGROUND

1. The Local Authority (LA) is the employer of the staff in community and voluntary controlled schools. The governing body is the employer of the staff in foundation and voluntary aided schools.
2. The governing body and headteacher have separate and particular responsibilities for selecting and managing staff. At any time when a school has a delegated budget the governing body has extensive powers over staffing. It also has responsibilities under employment law.
3. The main staffing functions of the governing body are set out in the [School Staffing \(England\) Regulations 2003](#). These Regulations are made under [Sections 35 and 36 of the Education Act 2002](#) and contain responsibilities for the headteacher and the LA in addition to the governing body. Statutory guidance on staffing functions under these provisions has also been produced and must be considered by any party undertaking staffing functions.
4. These Regulations and statutory guidance provide for:
  - the appointment of a headteacher and deputies;
  - the appointment of other teachers and support staff;
  - the regulation of conduct and discipline of staff;
  - the suspension and dismissal of staff;
  - the role of the governing body and the headteacher;
  - advice from the LA and the headteacher on appointments and dismissals.

They also include provision for the LA to make written reports on unsuitable headteacher candidates, or where there is serious concern about the performance of the headteacher.

## THE ROLE OF THE GOVERNORS AND HEADTEACHER

5. The governing body has overall responsibility for staffing matters at a school. The governing body decides the number of staff (both teaching and support staff). When a member of staff leaves, the governing body will decide whether or not to replace him or her.
6. Many staffing functions may be delegated and the governing body may delegate these to the headteacher, or an individual governor or committee of governors working with or without the headteacher.
7. The normal expectation is for the headteacher to lead the process of making staff appointments outside the leadership group (i.e. other than headteachers, deputy headteachers and assistant headteachers) and for making initial dismissal decisions. The governing body should delegate these functions to the headteacher unless there are good grounds not to do so. The guidance of the Secretary of State for Children, Schools and Families on this headteacher responsibility, which includes the circumstances in which these matters are not delegated to the headteacher, is contained in [Section 1 of the statutory Staffing Guidance](#).

## 10. STAFFING

- VA In the case of a voluntary aided school with a religious character, the governing body may agree staffing policies which provide for governor involvement in the interests of preserving the school's religious character.
8. Governors lead the process of making appointments to the leadership group, for hearing appeals against dismissals and hearing appeals under locally agreed disciplinary and grievance procedures. The governing body must set up a selection panel for appointing a headteacher or deputy headteacher (see below).

### LOCAL AUTHORITY ADVISORY RIGHTS

9. The LA, through a representative, has an entitlement to attend (which it may decide not to exercise), for the purposes of giving advice at:
- all proceedings, including interviews, of the governing body and the selection panel, relating to the appointment of a headteacher or deputy headteacher;
  - all proceedings, including interviews, relating to the appointment of other teachers;
  - all proceedings relating to any decision that someone working at the school should be dismissed.

Any advice given by the LA representative must be considered by those concerned before a decision is made.

- VA  
F The governing bodies of voluntary aided, foundation and foundation special schools are in general the employers of the school's teaching and support staff (although the LA may employ some support staff directly). The LA does not have an automatic statutory right of attendance at appointment and dismissal proceedings, but the governing body may accord the LA rights to attend and give advice. The coverage for those rights can vary. They may cover either appointments or dismissals or both, and may relate to the headteacher and deputy headteachers or all teachers. If the governing body does not agree advisory rights, the LA is entitled to seek a determination from the Secretary of State to accord such rights. Where the LA is accorded advisory rights, any advice given must be considered by those concerned before making a decision.

### APPOINTING THE HEADTEACHER

10. The headteacher is the key figure in the school. The position should be advertised throughout England and Wales unless the circumstances set out in 2.15 to 2.21 of the [Staffing Guidance under Sections 35\(8\) and 36\(8\) of the Education Act 2002](#) apply. The full governing body must set up a selection panel of at least three governors. The selection panel must provide the LA with the details of the candidates selected for interview. The panel interviews any appropriate applicants and then recommends one of the people interviewed to the governing body for approval.
11. If the LA writes to the selection panel about the unsuitability of any candidate within seven days, the selection panel must consider the LA's views. If they still interview that candidate and wish to recommend that candidate to the governing body, the selection panel must respond to the LA in writing and make the correspondence available to the governing body. The LA or a representative has a right to attend relevant meetings of the selection panel to offer professional advice, but only governors on the selection panel can vote.
12. The governing body has a duty to consider the LA's advice before making a decision. The decision of the selection panel must be endorsed by the full governing body. If the selection panel makes no recommendation, the governing body does not approve a recommendation, or the LA declines to appoint the recommended candidate, the governing body may re-advertise the vacancy. The LA must appoint a candidate recommended by the panel if the recommendation is approved by the governing body, unless the candidate does not meet the staff qualification requirements as described in the paragraphs below dealing with teacher qualifications and the General Teaching Council for England (GTC).

13. **VC**  
**F** At foundation and voluntary controlled schools with a religious character, the governing body may take into account any candidate's suitability and ability to preserve and develop the religious character of the school.
14. **VA** At voluntary aided schools with a religious character, the governing body may give preference to any candidate whose religious opinions and worship are in accordance with the tenets of the religious denomination of the school.
15. Once appointed, the relevant body (governing bodies of maintained schools with a delegated budget, and LAs for schools without a delegated budget and pupil referral units) must, through Regulations made under [Section 21](#) of the Education Act 2002, "have regard to headteachers' work-life balance". The Regulations state: "In deploying and managing headteachers, the relevant body must have regard to the desirability of the headteacher being able to achieve a satisfactory balance between the time required to discharge his professional duties and the time required to pursue his personal interests outside work."

### HEADTEACHER QUALIFICATIONS

16. On 1 April 2004, it became mandatory for all first-time headteachers appointed to a post in LA maintained schools and non-maintained special schools in England, to hold the National Professional Qualification for Headship (NPQH). Until 31 March 2009 there is a transitional arrangement in place which allows those who are working towards the programme to be appointed to a first headship. However, from 1 April 2009 only those who have successfully completed NPQH can be lawfully appointed to their first substantive headship position.
17. Teachers who hold the Welsh NPQH, the Scottish Standard for Headship and the Professional Qualification for Headship in Northern Ireland are deemed to hold a qualification/standard which is equivalent to the NPQH. Those holding a comparable qualification obtained in Switzerland or any European Economic Area (EEA) country would similarly not be required to hold NPQH. A teacher who holds, or is working towards the National Professional Qualification in Integrated Centre Leadership (NPQICL) may be appointed to a headteacher post in a maintained nursery school, but such teachers would be required to hold or be working towards NPQH, if they were to be appointed to a headship position in a maintained school or non-maintained special school.

### APPOINTING DEPUTY HEADTEACHERS

18. With the exception of the LA's right to make representations about unsuitable headteacher candidates, the procedure for appointing deputy headteachers is the same as that for headteachers set out in paragraph 10, above. The governing body decides how many, if any, deputy headteachers the school should have. Any vacancies should be advertised throughout England and Wales unless the circumstances set out in 2.15 to 2.21 of the [Staffing Guidance under Sections 35\(8\) and 36\(8\) of the Education Act 2002](#) apply.
19. The headteacher has the right to attend meetings of the governing body to discuss the appointment of a deputy headteacher and to offer advice, as does the LA. The LA has to appoint the candidate recommended by the governing body unless he or she fails to meet the legal requirements or qualifications requirements set out below.

### ADVISORY RIGHTS OF DIOCESAN AUTHORITIES AT VOLUNTARY AND FOUNDATION SCHOOLS WITH A RELIGIOUS CHARACTER

20. **VA** In a voluntary aided school that is a Church of England or Roman Catholic school, the appropriate diocesan authority should have the same advisory rights as the LA with respect to teacher, including headteacher, appointments and dismissals.

N.B. This is recommended in the Staffing Guidance but is no longer a statutory requirement.

21. In a foundation and voluntary controlled school with a religious character, which is a Church of England or Roman Catholic Church school, the governing body may extend advisory rights over teacher appointments and dismissals to the diocesan authority. These diocesan advisory rights can apply to all teachers, or particular descriptions of teachers, such as the headteacher and deputy headteacher or reserved teachers. Where such advisory rights have been accorded, they will apply in the same way as the LA's advisory rights (see paragraph 9, above).

VC  
F

### **RELIGIOUS CONSIDERATIONS IN EMPLOYING TEACHERS AND SUPPORT STAFF AT VOLUNTARY AIDED SCHOOLS**

22. In voluntary aided schools which have a religious character, the governors have extra rights with respect to employing, appointing or dismissing members of the school workforce. In appointing, paying or promoting members of the school workforce, the governing body may give preference to persons:

VA

- whose religious opinions are in accordance with the tenets of the religion of the school;
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education in accordance with those tenets.

In considering dismissals, the governing body may have regard to any conduct that is incompatible with the precepts, or with the upholding of the tenets, of the religion of the school.

Governing bodies of schools with a religious character will need to be aware that whilst they are permitted to apply religious criteria in connection with the employment of support staff, there must be a genuine occupational requirement (GOR) for that person to be of the particular faith to carry out that job.

The Employment Equality (Religion or Belief) Regulations 2003 prevent employers from discriminating on the basis of religion or belief unless there is a GOR for a person to be of a particular faith in order to carry out that particular job. The revised Staffing Guidance issued by the Department reminds schools of their obligations under these Regulations and provides specific guidance (including from ACAS) as to when a GOR would apply.

23. At voluntary aided schools whose trustees are trustees of a Roman Catholic religious order, the governing body may appoint as headteacher a candidate proposed by the Major Superior of the order without going through the usual procedures for appointing a headteacher, including setting up a selection panel. The governing body may not appoint a candidate who fails to meet the qualification requirements described in paragraphs 27–33, below.

VA

### **RESERVED TEACHERS AT VOLUNTARY CONTROLLED AND FOUNDATION SCHOOLS WITH A RELIGIOUS CHARACTER**

24. In voluntary controlled schools and foundation schools which have a religious character, the foundation governors have to be satisfied about the fitness of reserved teachers and can give directions about their dismissal. These teachers give religious instruction and must not be appointed unless the foundation governors are satisfied that they are suitable and competent to do this. The foundation governors can insist on dismissing from employment as a reserved teacher a teacher who fails to give suitable and efficient religious education.

VC  
F

25. Such a school must include reserved teachers where the number of teaching staff is more than two. The number of reserved teachers must not exceed one-fifth of the teaching staff (including the headteacher), but where the number of teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five.

VC  
F



26. Following amendments to Section 58 of the School Standards and Framework Act 1998, voluntary controlled and foundation schools (including trust schools) with a religious character can now appoint the headteacher as a reserved teacher, namely as one of the 20 per cent of the school's teaching staff who may be selected for their ability to teach religious education in accordance with the tenets of the relevant faith at the school and specifically appointed to do so.

### TEACHER QUALIFICATIONS

27. Teachers employed at LA-maintained and non-maintained special schools in England and Wales are required to have Qualified Teacher Status (QTS). QTS can be gained either through an undergraduate or postgraduate training programme offered by an accredited Initial Teacher Training (ITT) provider, or by following the employment-based teacher training programme such as the Graduate or Registered Teacher Programme, the Overseas Trained Teacher Programme, Teach First and the Flexible and Assessment routes to QTS which are run by the Training and Development Agency for Schools (TDA) in England and the National Assembly in Wales. The skills tests are one of the standards that teachers need to pass to gain QTS. The skills tests only apply to teachers trained in England. Wales does not have skills tests.
28. In England, the skills tests are one of the standards that teachers need to pass to gain QTS. Teachers who gained QTS between 1 May 2000 and 30 April 2001 were awarded QTS, but were required to pass the numeracy test in order that they could successfully complete induction. As of 27 April 2007 any teacher in this group, known as Cohort 1, who has not passed a numeracy skills test cannot work as a teacher in a maintained school or non-maintained special school in England, and has been marked with a teaching restriction against their name on the GTC teacher qualification database. Teachers in this position may pass the test after this date and become eligible to teach again, but may not be employed as a teacher until they have done so. From 1 May 2001 trainee teachers had to pass skills tests in numeracy and literacy, and, from 1 May 2002, in information and communication technology (ICT), before they could be awarded QTS. These trainees were allowed to teach for up to five years without passing all of the tests and gaining QTS, but the law has now changed and those who had not gained QTS by 31 August 2008 can no longer be employed as teachers. Similarly, from that date schools can no longer employ trainees who have completed their courses but not passed the skills tests and gained QTS.
29. The GTC can advise on teaching qualifications and whether a teacher has been awarded QTS. (This can be done by contacting the Teachers' Qualifications (TQ) Helpdesk by emailing [tqanswer@gtce.org.uk](mailto:tqanswer@gtce.org.uk) or by calling 0121 345 0140.)
30. Teachers with relevant professional recognition from Scotland, Northern Ireland or other Member States within the EEA and Switzerland may be eligible for QTS without further training. (They can confirm their eligibility by contacting the General Teaching Council for England, Teachers' Qualifications Section, Victoria Square House, Victoria Square, Birmingham, B2 4AJ.)
31. Schools may employ unqualified teachers as instructors if they have special qualifications or the experience needed for the post, and where no suitable qualified teacher, graduate teacher or registered teacher is available for appointment or to give instruction. Further advice on who can teach is available on [TeacherNet](#)

### Overseas Trained Teachers (OTTs)

32. The Education (Specified Work and Registration) Regulations 2003 as amended by the Education (Specified Work and Registration) (England) (Amendment) Regulations 2007 provides that a person who has successfully completed a programme of professional training for teachers in a country outside the EEA, and which is recognised as a programme of training by a competent authority in that country, may work as a teacher in England for four years. If an overseas trained teacher (OTT) wishes to continue to work in maintained schools for longer than four years they must have been awarded QTS. The

four-year period an OTT is allowed to teach without QTS runs continuously from the first day that the person was employed as a teacher and expires exactly four years later, regardless of whether the teacher has been employed as a teacher for the whole of the four-year period. The Regulations do not provide for OTTs without QTS to teach after four years unless:

- the teacher has been absent because they have taken either statutory maternity leave (or maternity leave allowed under their contract of employment), paternity leave, parental leave or adoption leave as conferred by the [Employment Rights Act 1996](#). The four-year period can be extended by the amount of statutory leave which has been taken within the four-year period; or
- the teacher has been absent because of her pregnancy. In such cases, the four year period can be extended by a period equivalent to the amount of pregnancy-related absence.

It may be possible for OTTs without QTS to be redeployed as instructors, but only for the time that there is no suitable qualified or trainee teacher available to carry out the work.

Unless one of the above exemptions applies, it is unlawful for OTTs to continue teaching beyond four years if they have not been awarded QTS. It is important that when OTTs are appointed, they are made aware of the statutory requirements by schools and LAs and are encouraged to make arrangements to obtain QTS via the appropriate TDA-approved route, usually the OTTP, shortly after they begin teaching. Full guidance is available on the [TeacherNet](#) website.

33. Under the requirements laid down in the [Education \(School Teachers' Qualifications Standards\) \(England\) Regulations 2003](#), where a teacher is employed in a school for the purpose of teaching a class of pupils who are hearing impaired, visually impaired or both hearing and visually (multi-sensory) impaired, in addition to being a qualified teacher he or she is required to possess an additional Mandatory Qualification (MQ) as approved by the Secretary of State. The Regulations allow for an aggregate period, not exceeding three years, for a teacher employed in a school to teach such classes, during which to obtain the relevant approved MQ. The GTCE has the responsibility of recording the details of a teacher's MQ. [Details of the approved MQ courses and providers can be found on the TDA website](#)

### **GENERAL TEACHING COUNCIL FOR ENGLAND (GTC)**

34. By law, from 1 June 2001 all teachers with QTS working in maintained schools or non-maintained special schools must be registered with the GTC. From the same date, the GTC has the power to take disciplinary action on teacher incompetence, and in some cases of teacher misconduct.

#### **Registration with the GTC**

35. When making appointments, including the appointment of supply teachers, LAs and schools must ensure that a teacher with QTS is registered with the GTC. The GTC will register newly trained teachers when confirmation of the award of QTS is received in July or August. If schools wish to appoint teachers with QTS who have not yet registered, they should inform them that they must apply for registration before they take up their posts. (Employers should contact the GTC's Employer Access online service to check registration. For information on how to gain access to this service, telephone 0870 001 0308.) The GTC will advise LAs and schools about how they can access the register of teachers and check that the teachers whom they employ, or intend to employ, are registered.

#### **Registration fee**

36. Since April 2002 the GTC has charged an annual registration fee. In some cases schools and LAs may be required by the GTC to deduct registration fees from the salaries of

teachers and remit them to the GTC. The GTC will give schools and LAs advance notice of any teachers for whom deductions should be made. Teachers who are subject to the statutory provisions of the *School Teachers' Pay and Conditions Document* (STPCD) receive an allowance towards this fee.

### **Disciplinary powers of the GTC**

37. The GTC has the power to take disciplinary action in cases where it is alleged that a registered teacher:
- is guilty of unacceptable professional conduct or serious professional incompetence;
  - has been convicted of a criminal offence which raises questions about his or her suitability to be a registered teacher.

The GTC has this power, except where the case involves the safety and welfare of children. Such cases will continue to be dealt with by the Secretary of State for Children, Schools and Families.

38. The GTC's role does not replace the existing disciplinary powers of schools and LAs in relation to the staff that they employ. Usually the GTC's role will begin only when a school has ceased to use a registered teacher's services, regardless of whether the person's services are terminated, or he or she leaves voluntarily. The GTC has the power to make disciplinary orders against registered teachers. A disciplinary order may stipulate that:
- the teacher's name be removed from the GTC's register; or
  - the teacher should meet specified conditions to maintain registration; or
  - should be subject to a reprimand.

Where the GTC issues a discipline order, it will notify the teacher's employer and decide whether to publish details on its website. The GTC is obliged to send a copy of any disciplinary order made to the Secretary of State for Children, Schools and Families, who will then consider whether to take action to bar or restrict the teacher's employment under powers contained in [Section 142 of the Education Act 2002](#) (i.e. to include a person in List 99).

39. Subject to a list of specific exemptions, no one who has gained QTS after 7 May 1999 should be employed in a maintained school or a non-maintained special school in England unless they have satisfactorily completed, or are working towards completion of, a statutory induction period. Any newly qualified teacher (NQT) contracted to work in a maintained school or non-maintained special school for at least one term (including, with the headteacher's agreement, on a supply basis), should be provided with an induction programme and appropriate arrangements for this should be made.

### **Reporting cases to the DCSF and the GTC**

40. Employers must report all cases to the DCSF where they cease (or might have ceased) to use a person's services because he or she is considered unsuitable to work with children as a result of misconduct, or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person's contract is terminated or he or she leaves voluntarily. The [Education \(Prohibition from Teaching or Working with Children\) Regulations 2003](#) lists the information that employers are required to supply to the Secretary of State for Children, Schools and Families as part of a report. The police will continue to report convictions and cautions incurred by teachers to the DCSF (where they are aware that a person is a teacher).
41. The Secretary of State for Children, Schools and Families will determine whether a case relates to the safety and welfare of children, and if it does not, will pass the papers to the GTC, who will then consider the case under its disciplinary functions. There is a similar duty to report cases to the GTC where the employer dismisses a teacher on grounds of incompetence, or would have considered doing so if the teacher had not resigned. This is

provided for under [Regulation 29 of the General Teaching Council for England \(Disciplinary Functions\) Regulations 2001](#).

### **Incompetence**

42. Where an employer has ceased to use a teacher's services on grounds relating to his or her professional incompetence, or where an employer might have ceased to use a teacher's services on such a ground, had the teacher not ceased to provide those services, the employer must report the case to the GTC. The GTC will then consider the case under its discipline functions. (Further details about referring a case to the GTC can be obtained by contacting the GTC.)

### **Compromise agreements**

43. If an employer reaches a compromise agreement about the termination of a teacher's employment, this does not affect the employer's statutory duty to report the case to the Secretary of State for Children, Schools and Families or the GTC. This should be made clear to the teacher. Compromise agreements must not be used in cases where the termination of employment is as a result of allegations that a member of staff has:
- behaved in a way that may have harmed a child;
  - possibly committed a criminal offence against a child;
  - behaved in a way towards a child that indicates they are unsuitable to work with children.

### **INDUCTION OF NEWLY QUALIFIED TEACHERS (NQTs)**

44. New regulations (the [Education \(Induction Arrangements for School Teachers\) \(England\) Regulations 2008](#)) relating to NQT induction came into force in September 2008. Supporting guidance is available on the [TeacherNet website](#).
45. Teachers who obtain QTS after 7 May 1999 must successfully complete an induction period of three school terms (or equivalent) in order to remain eligible for employment as a teacher in maintained schools and non-maintained special schools in England. Subject to a list of specific exemptions, no one who gained QTS after 7 May 1999 should be employed in a maintained or non-maintained special school in England unless they have completed or are working towards completion of a statutory induction period.
46. If a period of employment of one school term or more is offered to a teacher to whom induction applies, and who has not yet completed their induction period, that period of employment counts towards induction and appropriate arrangements for this must be made. NQTs must have at least a 10 per cent reduction to their timetable to allow their induction programme to take place.
- N.B. This is in addition to planning, preparation and assessment time. Under the terms of the [STPCD](#), the professional duties of headteachers include ensuring that teachers serving induction periods receive at least a 10 per cent reduction to their timetable in relation to a classroom teacher at that school who does not receive a teaching and learning responsibility payment.
47. When appointing NQTs, the governing body should take into account the school's responsibility to provide the necessary monitoring, support and assessment for the induction period. Careful consideration should be given to the appointment of the NQTs' induction tutor, and especially to ensuring the tutor has the time and skills to fulfil their role effectively.
48. Funding for the induction of NQTs in maintained and non-maintained special schools is incorporated into the main school funding system. It is for headteachers to ensure that the school commits appropriate resources to induction. Additionally, independent schools or further education institutions choosing to offer induction to NQTs should ensure that appropriate resources are deployed.

49. At the end of the induction period the appropriate body (i.e. the LA maintaining the school) is responsible for deciding whether the NQT has met the core standards on the basis of the headteacher's recommendation.
50. The statutory requirements allowing a teacher who has failed to complete his or her induction period satisfactorily to appeal are contained in the [Education \(Induction Arrangements for School Teachers\) \(England\) Regulations 2008](#). If an NQ teacher has failed to complete his or her induction satisfactorily, or has been granted an extension to his or her induction period, the Regulations provide that the GTC is the body for hearing such appeals. The Regulations provide that the Appeals Committee may allow the appeal, dismiss the appeal or extend the appellant's induction for such duration as it thinks fit. The Appeals Committee considers every appeal in relation to all the evidence, acting in an independent and impartial manner, being objective and favouring neither party. The decision of the Appeals Committee is final, although appellants may seek a judicial review of their case.
51. Those teachers trained in other Member States within the EEA or Switzerland whose teaching qualifications are recognised in England, will be exempted from completing induction here. Teachers awarded QTS in Scotland are awarded QTS in England equal to the date of qualification in Scotland. If this is prior to the introduction of induction in England, they are not required to complete induction in England. If it is after the introduction of induction in England, then the requirement to undertake induction in England is dependent on the GTC for Scotland registration status:
- provisional registration means that teachers are required to complete induction in England;
  - full registration means that they are exempt from induction.
52. Teachers trained in Northern Ireland are exempt if they have successfully completed the induction stage of teacher education in Northern Ireland or taught in Northern Ireland before the induction stage was introduced.
53. NQTs who completed their induction in Wales from September 2003 are exempt from having to complete an induction period in England. Any induction that counts towards an induction period in Wales will count towards induction in England and vice versa. (Further induction guidance is available on the [TeacherNet website](#).)

### **APPOINTING SUPPORT STAFF**

54. The LA must appoint a person chosen by the governing body to fill a support post, unless that person does not meet the staff qualification requirements for support staff described in paragraph 56, below. Where the headteacher does not exercise delegated responsibility for support staff appointments, the governing body must consult the headteacher before making a recommendation, and in either case must consult the LA. The LA has an entitlement to make representations about the grade and remuneration of support staff.

### **CHECKING APPLICANTS**

55. When the governing body (or headteacher) has chosen to appoint a teacher, the LA must check that the person meets the staff qualification requirements. (This can be done by contacting the Teachers' Qualifications Helpdesk by emailing [tqanswer@gtce.org.uk](mailto:tqanswer@gtce.org.uk) or by telephoning 0121 345 0140. These requirements are set out in the [Education \(School Teachers' Qualifications\) \(England\) Regulations 2003](#), the [Education \(Specified Work and Registration\) \(England\) Regulations 2003](#), the [Education \(Specified Work and Registration\) \(England\) \(Amendment\) Regulations 2007](#) and the [Education \(Induction Arrangements for School Teachers\) \(Consolidation\) \(England\) Regulations 2001](#).

The LA must be satisfied that the candidate has the necessary health and physical and mental capacity for the post. The LA will seek the advice of its medical adviser on this.

The LA must be satisfied that the candidate has the appropriate teaching qualifications, which in the case of teachers almost invariably will include QTS.

56. [Section 142\(8\) of the Education Act 2002](#) provides that an employer may not use a person who is subject to a direction under Section 142 of that Act (i.e. a person who is included in List 99) to carry out work in contravention of the direction. If a teacher or a member of support staff is to provide education or have regular contact with children, the LA should also check List 99, which is maintained by the DCSF, to ensure that the person is not barred, or restricted from teaching or other work to which [Section 142 of the Education Act 2002](#) applies. This is normally done as part of an enhanced Criminal Records Bureau (CRB) check, although the LA must ensure they request that the person is checked against the Protection of Children Act 1999 List and List 99.
57. All new appointments to a school's workforce will require an enhanced CRB check. By new appointments, this means anyone who in the three months prior to appointment has not worked in:
- a school in England in a post which involved regular contact with children, or any post they were appointed to since 12 May 2006;
  - a Further Education College in England in a position which involved the provision of education and regularly caring for, training, supervising or being in sole charge of children or young people under the age of 18.

All newly appointed staff who have lived outside the UK must have an enhanced CRB disclosure. This requirement was applied retrospectively to all such staff if they were recruited after March 2002. (SI 3197 2006 and paragraphs 4.65 and 66 of [Safeguarding Children and Safer Recruitment in Education](#))

58. Schools are required to keep a single central record detailing the range of checks they have carried out on their staff as set out in the [School Staffing \(England\) \(Amendment\) \(No. 2\) Regulations 2006](#). Enhanced CRB checks will also be required for any staff who have lived outside the UK. As these checks may not be sufficient to establish suitability to work with children, schools must ensure they carry out the full range of other checks.
59. The [Safeguarding Vulnerable Groups Act 2006](#) provides the legal framework for the new vetting and barring scheme. The Independent Safeguarding Authority (ISA) scheme is a non-departmental public body established under that Act; the ISA is required to establish and maintain a children's barred list and a vulnerable adults' barred list. The Government announced in April 2008 that the new scheme, which will replace current barring schemes under List 99, the Protection of Children Act 1999 (PoCA) and the scheme relating to the protection of vulnerable adults (PoVA), will go live from October 2009. Before then, elements of the scheme are starting in stages, linked to a series of pieces of secondary legislation under the Safeguarding Vulnerable Groups Act 2006. In particular:
- since January 2008 the ISA has existed as a non-departmental public body;
  - since April 2008 the ISA has been temporarily advising ministers on barring decisions taken by ministers under current schemes;
  - Since 20 Jan 2009, barring decisions have been taken by the ISA and not by the Secretary of State. Therefore new referrals should be made direct to the ISA. Details of the ISA address can be found on the ISA website. The information that should be provided in the referrals remains unchanged until the scheme under the new Act goes live. There is also no change to an employer's statutory duty to do CRB checks on new staff.

The scheme will prevent those who pose a risk of harm to children or vulnerable adults from gaining access to them via their work or through voluntary activities. From 12 October 2009, the two new barred lists for workforces working with children and vulnerable adults respectively will replace:

- List 99;

- the Protection of Children Act list;
- the Protection of Vulnerable Adults list; and
- disqualification orders imposed by the courts.

60. The Safeguarding Vulnerable Groups Act 2006 specifies that individuals acting as members of the governing body of an educational establishment (defined as either an educational establishment which is exclusively or mainly for the provision of full-time education to children, or a maintained nursery school) need to be checked under the new scheme when it comes into force. The scheme will be phased in from 12 October 2009, and the phasing period will last five years in order to phase the requirements across the existing workforce. Applications to become ISA-registered will be handled by the CRB. The current CRB application form will be revised so that it will be possible to apply for registration at the same time, and using the same application form as an Enhanced Disclosure application.

The application fee for those in paid employment will be £64. This is a one-off payment, which will be made up of two elements:

- £28 will contribute to the running of ISA, continuous updating and an online registration checking system;
- £36 covers the CRB's administration costs (equivalent to the cost of a CRB Enhanced Disclosure).

If an individual is already ISA-registered and moves jobs, they will be able to take their registration with them. A subsequent employer will be able to check online, for free, that they are registered. If a subsequent employer is required to do so, or chooses to do so, they may carry out an Enhanced Disclosure check. (Further information, including the requirements that the scheme places on employers and employees, is available from [the ISA website](#).)

61. Disclosures contain details of any convictions and cautions that a person may have, as well as details of whether they are included on List 99, the Protection of Children Act list, or have been disqualified from working with children by the court (detailed guidance on pre-employment checks, including disclosures, is contained in *Safeguarding Children and Safer Recruitment in Education*). If a person's disclosure reveals information that raises doubts about the person's suitability, the governing body may want to consider this in reaching its final recruitment decision. LAs will also need to check whether teachers are registered with the GTC and whether any restrictions are in force against them. (Employers can check whether a teacher has a GTC restriction by emailing the Teachers' Qualifications Helpdesk at [tqanswer@gtce.org.uk](mailto:tqanswer@gtce.org.uk) or by telephoning 0121 345 0140.) An LA must not appoint a person who fails to meet any staff qualification requirement.

### **DISCRIMINATION IN APPOINTMENTS AND DURING SERVICE**

62. Applicants for posts at the school must be judged on their merits against the objective requirements for the job. It is unlawful to give one candidate a better chance than another. Allegations that candidates have been given preferential treatment, or similar, may lead to an Employment Tribunal (see paragraphs 108–9, below).

63. Under the [Disability Discrimination Act 1995](#), employers (governing bodies and LAs) must not discriminate against current or prospective employees with disabilities, or those who have had disabilities in the past. Governors and LAs must make reasonable changes to their employment arrangements or premises if they disadvantage a disabled employee compared with a person who is not disabled. For prospective employees, they must consider whether there is any "reasonable adjustment" which would overcome a disadvantage to a disabled applicant before deciding whether they are the best person for the job. Less favourable treatment will only be justified if an adjustment to enable a disabled person to do the job is not reasonable, or their disability would place pupils or

staff at risk. Chapter 17 of this Guide (Equal opportunities and school governors) covers governing bodies' responsibilities on discrimination in more detail.

## **PAY AND CONDITIONS OF SERVICE**

64. Teachers' pay structure is fixed by law. The pay structure includes scope for annual progression for classroom teachers (except for those who have passed the threshold, where further progression is on the basis of performance), as well as scope for discretion by governing bodies in setting the pay of classroom teachers, advanced skills teachers and the leadership group. From 1 September 2007, governing bodies must review the pay of all teachers annually. In doing so they must keep within the statutory provisions set out in the annual [STPCD](#). Governing bodies must have a clear pay policy discussed with staff.
65. When new appointments of support staff are made, the governing body decides the point on the scale to which they are appointed.
66. Under the [Equal Pay Act 1970](#) women are entitled to the same pay as men if they are employed to do the same work or work that is of equal value. Governing bodies must ensure that this requirement is complied with when making decisions about pay.
67. All teachers employed by LAs are subject to statutory conditions relating to their professional duties and working time which are set out in the annual [STPCD](#). These have effect as terms of their contracts of employment. In addition to these statutory conditions, teachers are subject to other non-statutory conditions which are laid down in their contracts of employment by the LAs themselves, such as those that provide for sick pay and maternity leave. Lastly, the terms of certain local or national agreements may be incorporated into their contracts of employment, either directly, or indirectly via the [STPCD](#). The changes outlined in [Raising Standards and Tackling Workload: A National Agreement](#) have been incorporated into teachers' contracts of employment via the [STPCD](#) and have now all been implemented in schools. Teachers can no longer be routinely required to carry out administrative and clerical tasks which do not call for the exercise of their professional skills and judgement, neither can they be required to invigilate external examinations. Teachers can only be required to provide cover for absent colleagues and teachers for a maximum of 38 hours in any school year. They are guaranteed at least 10 per cent of their timetabled teaching time for planning, preparation and assessment, and headteachers must have regard to the desirability of teachers being able to achieve a satisfactory work-life balance when allocating duties to them. Teachers with leadership or management responsibilities are entitled, so far as is reasonably practicable, to a reasonable amount of time to carry out those duties and headteachers are entitled to a reasonable amount of dedicated headship time to discharge their leadership and management responsibilities.
68. Governing bodies should be aware of the [School Governance \(Contracts\) \(England\) Regulations 2005](#) which came into force on 30 June 2005. These Regulations apply when schools are considering entering into contracts for services, and require the governing body of every maintained school to have regard to the [Code of Practice on Workforce Matters in Public Sector Service Contracts](#), as set out in the Schedule to the new Regulations.

## **PERFORMANCE MANAGEMENT**

### **Revised arrangements from 1 September 2007**

69. Revised Regulations on performance management for teachers and headteachers were made on 4 October 2006 and came into effect on 1 September 2007. To support the introduction of the revised arrangements, the Rewards and Incentives Group (RIG) has published guidance for LAs and schools. The first performance management plans under the revised arrangements for teachers were completed by 31 October 2007 and for headteachers by 31 December 2007.



70. With reference to performance management, the [Education \(School Teacher Performance Management\) \(England\) Regulations 2006](#):
- require governing bodies (or, in the case of unattached teachers, LAs) to establish and, together with the headteacher, implement a performance management policy for their teachers;
  - provide for the appointment of reviewers and specify the procedure that they must follow when preparing and revising teachers' plans, and reviewing their performance in light of those plans in the teachers' planning and review statement;
  - allow governing bodies (where the reviewee is the headteacher), headteachers and LAs (where the reviewee is a teacher) to delegate their reviewer's duties in their entirety to two or three individual governors and the teacher's line manager respectively, and, where they do this, enable governing bodies, headteachers and LAs to moderate the plans drawn up by individual governors or line managers;
  - provide headteachers and teachers with a right of appeal against any of the entries recorded in their statement; and
  - require governing bodies and authorities to have regard to the results of their teachers' reviews when exercising discretion in relation to their pay.

The Regulations apply to all teachers employed for one term or more, unless they are:

- undergoing and have not satisfactorily completed an induction period in accordance with the [Education \(Induction Arrangements for School Teachers\) \(Consolidation\) \(England\) Regulations 2001](#);
- the subject of capability procedures.

### **Establishing, implementing and monitoring a performance management policy (Regulations 7 and 8)**

71. The governing body has a duty to establish a written performance policy for its school. It may either formulate the policy itself or direct the headteacher to do so. Where the headteacher formulates the policy, the governing body may modify it before accepting or rejecting it. Where the policy is rejected by the governing body, it must then formulate one itself. (The Rewards and Incentives Group has produced a model performance management policy, which can be found on the [TeacherNet website](#).)
72. Before establishing or revising the policy, the governing body must ensure that all the teachers at the school are consulted on the draft policy, and it must seek to agree the policy or any revisions to it with the recognised trade unions, having regard to the results of the consultation of all teachers.
73. The headteacher and the governing body are responsible for implementing the performance management policy. The headteacher is responsible for producing an annual written report about the operation of the performance management policy, the effectiveness of the school's performance management procedures and the teachers' training and development needs. The governing body must review the performance management policy annually and, where it sees fit, revise the policy.
74. The governing body has a duty to ensure that the performance of the teachers at its school is managed and reviewed in accordance with the school's performance management policy and the Regulations.

### **Appointing reviewers for headteachers (Regulation 10)**

75. The governing body must determine the timing of the performance management and review cycle of the headteacher. The governing body also acts as the reviewer for headteachers. The governing body may appoint two or three governors to perform the duties of a reviewer as long as these governors are not teachers or members of staff at the school.
76. Where the governing body of a school with a religious character appoints two or three governors, at least one of them must be a foundation governor of the school. Where the

governing body of a voluntary aided school appoints two governors, one of them must be a foundation governor of the school. Where they have appointed three governors, a minimum of two of them must be foundation governors.

77. A headteacher may submit a written request for a governor to be replaced if, for professional reasons, he considers the governor to be unsuitable. Where the governing body is persuaded that the governor is unsuitable, it must appoint a replacement governor in accordance with the regulations. Where the governing body does not agree to the request, it must notify the headteacher of its decision in writing, stating its reasons and, upon request, attach the headteacher's request and its decision to the statement for that cycle.
78. The governing body may replace at any time a governor appointed as a reviewer where it believes that the governor is no longer suitable, for professional reasons, or is no longer able to perform the reviewer's duties for any reason. The replacement governor must be appointed in accordance with the Regulations.

### **Planning and reviewing headteacher performance (Regulation 18)**

79. The governing body must utilise external advice in relation to the management and review of the performance of the headteacher. The governing body must use the School Improvement Partner (SIP) for the advice and support that it needs for this purpose. The relevant governors must meet with the SIP and the headteacher to discuss and determine the headteacher's objectives and performance criteria for the coming year (the planning meeting).
80. The headteacher's objectives should be agreed between the headteacher and the appointed governors, with advice from the SIP. Objectives may include those relating to school leadership and management, and pupil progress. If no agreement is reached, the relevant governors must set the objectives for the headteacher. The agreed or set objectives must be recorded in a written statement. If the objectives have been set, rather than agreed, the headteacher may add written comments to the statement.
81. At or near the end of each cycle, the relevant governors and the SIP must meet with the headteacher to review his or her performance against the performance criteria specified in the statement, and determine the recommendation on pay progression (the review meeting). The review meeting should be combined with the planning meeting for the next cycle, wherever practicable.
82. Within five days of the review meeting, the relevant governors must record in draft in the statement the results of the review, together with any recommendation on pay progression, and pass the draft statement to the headteacher. Within 10 days of the review meeting, the relevant governors must prepare and sign a final version of the statement and make it available to the headteacher, who may add any comments. The signed statement must then be passed to the governing body and a copy of the statement must be given to the headteacher. Subject to the outcome of any appeal, the contents of the statement will be deemed to reflect the results of the review meeting.

### **Continuing professional development (CPD) (Regulation 13)**

83. A key part of the planning discussion should be about determining the reviewee's training and development needs and the actions to be taken to address those needs, as well as determining the support that will be provided to help the reviewee meet specific performance criteria. Support to help the reviewee meet these criteria may take a number of forms, for example coaching and mentoring, assistance in the classroom and the provision of equipment and/or ICT facilities. The actions to be taken to address training and development needs may include attendance on relevant courses, but this is only one way in which such needs may be met. CPD can take many other forms. The Regulations, associated guidance and a model performance management policy can be found in the [revised performance management section](#) on the TeacherNet website. In addition, the TDA has produced a number of support materials, which can be found on [its website](#).

## ASSESSMENT AGAINST POST-THRESHOLD TEACHER STANDARDS

84. A review of professional standards, including the performance threshold standards, was conducted by the TDA and the revised standards came into effect on 1 September 2007. The post-threshold teacher standards (which replace performance threshold standards) form part of a framework of national standards, from QTS and induction right up to headship, that will provide a focus for teachers' careers and their professional development.
85. Any teacher with QTS whose pay and conditions are determined under the STPCD, and who is paid on point M6 of the main pay scale, may apply once in any school year to his or her headteacher for assessment against the post-threshold teacher standards (set out in Annex 1 of the STPCD).
86. In the case of a school which has a delegated budget, the governing body is legally responsible for the threshold process. However, the governing body is required to delegate the receipt and assessment of applications to the headteacher. The headteacher must first be satisfied, through the outcomes of performance reviews, that the teacher meets the core standards before going on to assess whether the teacher meets the post-threshold standards. If the headteacher is satisfied that the teacher meets the core standards he or she must go on to assess whether the teacher meets the post-threshold standards. Where headteachers decide that applicants have not met the core standards or have not met the post-threshold standards, they must give them their reasons for that decision. They should also handle all the practical aspects of the process.
87. In the case of unattached teachers, the authority which employs them is legally responsible for this process but is required to delegate the receipt and assessment of their applications to the person with management responsibility for them.
88. Everyone involved in the assessment process is expected to act fairly, and in particular must not discriminate unlawfully on the grounds of an applicant's sex, sexual orientation, age, ethnic origin, religious beliefs, disability or trade union activities, or because that person works part-time or is employed under a fixed-term contract. Teachers who believe that they have been discriminated against unlawfully on any of these grounds have recourse to the pay appeals process within their school in addition to other legal rights and remedies.

## DISCIPLINE, GRIEVANCE PROCEDURES AND SUSPENDING STAFF

89. The governing body is responsible for setting out disciplinary rules and procedures for staff. These must include rules and procedures for dealing with a lack of capability on the part of any member of staff. They must also have procedures for staff to follow if they have a grievance or complaint about their employment. These procedures should be made known to staff at the school. The governing body may delegate discipline and grievance procedures to one or more governors, to the headteacher or to one or more governors and the headteacher together, but it must not allow any outside body or persons to take decisions for it. Both the governing body and the headteacher have power to suspend on full pay anyone who works at the school, if it seems necessary. Each must inform the other, and the LA, if it takes such action. Only the governing body may end a suspension.

## LOCAL AUTHORITY CONCERNS ABOUT THE PERFORMANCE OF THE HEADTEACHER

90. The LA must send a written report to the chair of the governing body if it has serious concerns about the performance of the headteacher. At the same time the LA must send a copy of the report to the headteacher. The chair must notify the LA in writing of the action that he or she proposes to take in the light of the report (guidance on making such a report is set out in Section 8 of the [statutory Staffing Guidance](#)).

## DISPUTES WITH STAFF: STRIKE ACTION

91. If a trade union with members in the school organises industrial action in protest against an action of the governing body, it may have “immunity” under the law. This means that the union is acting within its rights and cannot be sued in the courts for its action. Immunity will depend on whether the union has carried out the correct procedures first, such as holding a secret ballot of its members, and whether the dispute is a “trade dispute” within the meaning of employment legislation. Immunity does not apply where the actions that the staff are protesting about do not affect them, for example decisions taken by the governing body of another school. However, it may apply to disputes with the LA.

### **TRADE UNIONS**

92. Governing bodies must recognise any unions that the LA recognises. If they wish they may recognise other unions.

### **DISMISSING STAFF**

93. The normal expectation is for headteachers, where appropriate, to lead the process of making initial dismissal decisions. The governing body should delegate these matters to the headteacher unless particular circumstances apply (see Section 1 of the [statutory Staffing Guidance](#)). Any appeal against an initial dismissal decision should be before a hearing of at least three governors who have had no previous involvement. Dismissal proceedings at the school must give the person the right to explain matters before a decision is taken and to appeal before the decision is passed to the LA.
94. The LA and headteacher have the right to be present or represented at any meeting to consider a dismissal. Where the headteacher does not have delegated responsibility (or the headteacher is being considered for dismissal), the initial decision should be delegated to one or more governors. If the person works solely at the school, the LA, as employer, must give notice of dismissal or if the circumstances justify it, terminate the contract within 14 days. If he or she also works elsewhere for the LA, the LA just has to withdraw him or her from the school.
95. The governing body must give the employee a written statement of the reasons for dismissal. It would be good practice to copy the statement to the LA as employer. An employee who thinks that he or she has been unfairly dismissed can complain to an Employment Tribunal. If a governing body is in doubt about how employment law affects a particular case, it should seek further advice from the LA.
96. Employers must report all cases to the DCSF where they cease (or might have ceased) to use a person’s services because he or she is considered unsuitable to work with children; or as a result of misconduct; or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person’s contract is terminated or he or she leaves voluntarily. The [Education \(Prohibition from Teaching or Working with Children\) Regulations 2003](#) list the information that employers are required to supply to the Secretary of State for Children, Schools and Families as part of a report. The police will continue to report convictions and cautions incurred by teachers to the DCSF (where they are aware that a person is a teacher).

### **REDUNDANCY**

97. If a school no longer needs the post of a member of staff whose contract says that his or her place of work is the school, the governing body may declare that person redundant. Before any person is dismissed on grounds of redundancy, all relevant statutory requirements, such as those concerning the selection of staff for redundancy and consultation with trade unions and others, must be observed. The employee should then be dismissed using the dismissal procedures described in this guidance.
98. Whenever a governing body contemplates redundancies, it should obtain advice from the LA as well as from any other professional personnel service provider that it may retain. The LA will need to consider whether there are any other suitable posts in the area.

## PREMATURE RETIREMENT AND COMPENSATION FOR REDUNDANCY

99. The governing body decides whether to grant premature retirement to teachers who are retiring at aged 50/55 and 60/65, and whether to award them added years' service under the [Teachers \(Compensation for Redundancy and Premature Retirement\) Regulations 1997](#). The governing body has discretion to grant premature retirement either for reasons of redundancy, or if the employer terminates a teacher's employment, in the interests of the efficient discharge of the employer's function.

N.B. Members of the Teachers' Pension Scheme (TPS) will have a different minimum age for premature retirement, depending on their pensionable service record:

- If a person entered pensionable employment for the first time after 5th April 2006 (or re-entered pensionable employment after that date but previous service was extinguished (eg by a repayment, transfer value or the award of benefits)) the minimum pension age for the award of premature retirement benefits is age 55.
- If a person has pensionable employment before that date, the minimum pension for premature retirement is age 50.

If a governing body is considering the award of premature retirement benefits, they should email Teachers' Pensions via the website [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk) to check a person's minimum pension age.

Governing bodies should also note that from 6th April 2010, as a matter of Government policy, the minimum age for premature retirement will be 55 for all scheme members. Scheme members may be a 'pre-2007 entrant' (with normal pension age (NPA) 60), a 'post-2007 entrant' (with NPA 65) or a 'person with mixed service' (with some service counting against NPA 60 and some service against NPA 65). If a governing body is considering the award of premature retirement benefits, the governing body should contact Teachers' Pensions via the website [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk) to check a person's NPA.

100. If the governing body grants a teacher premature retirement, the LA, as the compensating authority, will have to pay mandatory compensation towards that teacher's annual pension and retirement lump sum (see also paragraphs 104–7, below). The amount of mandatory compensation will reflect the cost to the pension scheme of allowing a teacher to take their pension before they reach 60/65. The younger the teacher when he or she is granted premature retirement, the higher the amount of mandatory compensation the LA will have to pay.
101. The governing body also decides on the level of compensation to grant a member of staff that it makes redundant. Although under the [Employment Rights Act 1996](#) it must make a statutory compensation payment for redundancy (worked out using the number of years' service and a limit on weekly earnings, which is currently £310), it is for the governing body to decide whether further compensation on top of that should be paid. For example, under the [Teachers \(Compensation for Redundancy and Premature Retirement\) Regulations 1997](#), governing bodies may have the right to base a redundancy payment on the teacher's actual salary. (The governing body can also make an initial severance payment to teachers who are made redundant or whose employment is terminated on efficiency grounds, but only if the governing body has not granted premature retirement.)
102. The governing body should bear in mind that [Section 37 of the Education Act 2002](#) gives LAs the power to take the costs of premature retirements (including the cost of any added years' service) from school budgets if they have not agreed to the premature retirement. [Section 37\(5\) of the Education Act 2002](#) allows LAs to take the costs of discretionary compensation for redundancy from a school's budget, if they have good reason to do this (an example of a good reason might be that the LA thinks the discretionary payment in a particular case is too high in relation to its own policy). So, it is important for the governing body to hold discussions with its LA about premature retirements and redundancy

compensation it plans to give. (Further information is given in DfEE Circular 15/97. This circular is no longer published; however a copy can be obtained from enquiries.PMFT-SWG@dcsf.gsi.gov.uk)

103. Some staff appointed some years ago may have contracts that say what payments must be made if the teacher takes early retirement. The governing body should make sure that any decision about how much the pension should be increased by takes account of these. Legal advice should be taken.

### TEACHERS' PENSION SCHEME (TPS)

104. Governors need to be aware of the flexibilities that exist within the Teachers' Pension Scheme (TPS), as these can help with the management of the workforce and succession planning. From 1 January 2007 changes introduced to the TPS have given more flexibility and greater choice over how individuals save and plan for retirement.
105. The changes have not altered the normal pension age for existing members, which remains at 60. New entrants to the TPS on or after 1 January 2007, or those who have had gaps in service of more than five years, will have a normal pension age of 65 for any future service. Teachers may still retire at, before or after their normal pension age.
106. The revised arrangements allow teachers to take part of their pension benefits while remaining in employment in a reduced capacity, for example, by going part-time. In addition, the calculation of pension benefits is now based on either the member's salary in the last year or the average of the best three consecutive years' salaries in the last 10 years, supporting those who wind down to retirement by moving to a lower salary in the years leading up to retirement. Schools may find these flexibilities helpful in retaining experienced teachers who otherwise may retire fully.
107. Further detailed information is available at the [Teachers' Pensions website](#). A DVD, *What Do You Want to Do When You Leave School? A Guide to the Teachers' Pension Scheme*, originally issued to all schools and education establishments in October 2006, has been revised. The DVD is being reissued to schools during the period January to March 2009, accompanying the distribution of benefit statements. The DVD can be viewed at the Pensions area of the [TeacherNet website](#).

### EMPLOYMENT TRIBUNALS

108. Employment Tribunals (formerly known as Industrial Tribunals) hear complaints where employers have discriminated against individuals or failed to respect their rights under employment law. Examples are:
- dismissing an employee unfairly;
  - refusing to allow a woman to return to work at a school after having a baby;
  - refusing to give trade unions information that they need for negotiations.
- Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation.
109. If the complaint is about a decision taken by a governing body, the governing body may have to appear before an Employment Tribunal to defend its action. The governing body must inform the LA within 14 days of being notified of the Employment Tribunal application. In cases of dismissal, the LA will pay any compensation or legal costs awarded by an Employment Tribunal, unless it can show that it has good reason to charge the school. This may happen if, for example, the LA had advised the governing body in the first place that an Employment Tribunal was likely to decide a dismissal was unfair. However, in law, the fact that an LA has a "no redundancy" policy is not reason enough to make the school pay. In cases other than dismissal (such as discrimination), any compensation or legal costs should be met by the school, or centrally by the LA in accordance with local arrangements. LAs may provide for this under their scheme under [Section 48 of the School Standards and Framework Act 1998](#).

## OTHER RELEVANT PARTS OF EMPLOYMENT LAW

110. There are other requirements of employment law that affect governing bodies as well as those already mentioned. The LA will be able to offer help and guidance. The main requirements for governing bodies and LAs are listed below.
- They must respect the rights of staff to return to work.
  - They must give the representatives of recognised independent trade unions any information that would help them in negotiations with the governing body, where this would be following good industrial relations practice. An example would be providing information about the budget.
  - They must not force a member of staff to join a union or take part in union activities, or prevent him or her from doing so.
  - They must respect the rights of staff to return to work after leaving to have children.
  - They must respect the rights of safety representatives and officials of independent, recognised trade unions to take time off with pay for specified purposes.
  - They must respect the rights of staff to have time off, not necessarily with pay, for other purposes, such as carrying out public duties (including duties as a governor of a maintained school or a Further Education College) and receiving antenatal care.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website [www.governornet.co.uk](http://www.governornet.co.uk)**

[The Equal Pay Act 1970](#)

[The Sex Discrimination Act 1975](#)

[The Race Relations Act 1976: Section 4](#)

[The School Teachers' Pay and Conditions Act 1991: Sections 1 and 2](#)

[The Trade Union and Labour Relations \(Consolidation\) Act 1992](#)

[The Trade Union Reform and Employment Rights Act 1993](#)

[The Disability Discrimination Act 1995](#)

[The Employment Rights Act 1996](#)

[The Education Act 2002: Sections 35, 36 and 37](#)

[The School Standards and Framework Act 1998: Sections 58, 60 and 81](#)

[The Education and Inspections Act 2006; Section 37](#)

[The Employment Relations Act 1999](#)

[The School Staffing \(England\) Regulations 2003: SI 2003/1963](#)

[The General Teaching Council for England \(Registration of Teachers\) Regulations 2000: SI 2000/2176](#)

[The General Teaching Council for England \(Disciplinary Functions\) Regulations 2001: SI 2001/1268](#)

[The Education \(School Teachers' Qualifications\) \(England\) Regulations 2003: SI 2003/1662](#)

[The Education \(Induction Arrangements for School Teachers\) \(Consolidation\) \(England\) Regulations 2001: SI 2001/2897 amended by SI 2001/3938, SI 2002/2063, SI 2003/106, SI 2003/2148 and SI 2005/1740](#)

## 10. STAFFING

[The Education \(Specified Work and Registration\) \(England\) Regulations 2003: SI 2003/1663](#)

[The Education \(Modification of Enactments Relating to Employment\) Order 2003: SI 2003/1964](#)

[The Teachers \(Compensation for Redundancy and Premature Retirement\) Regulations 1997: SI 1997/311](#)

[Current School Teachers' Pay and Conditions Document](#)

[The Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000: SI 2000/2122](#)

[The Education \(School Teacher Performance Management\) \(England\) Regulations 2006: SI 2006/2661](#)

[The Education \(School Teacher Appraisal\) \(England\) Regulations 2000: SI 2000/1620](#)

[The Education Act 2002: Section 142](#)

[The Education \(Prohibition from Teaching or Working with Children\) Regulations 2003: SI 2003/1184](#)

[The Education \(Prohibition from Teaching or Working with Children\) \(Amendment\) Regulations 2004: SI 2004/1493](#)

[The School Governance \(Contracts\) \(England\) Regulations 2005: SI 2005/1508](#)

### **GUIDANCE**

[Staffing guidance under Sections 35\(8\) and 36\(8\) of the Education Act 2002](#)

[Safeguarding Children and Safer Recruitment in Education \(DfES\)](#)

[Use of Supply Teachers \(DfEE Circular 7/96\)](#)

[What the Disability Discrimination Act \(DDA\) 1995 means for schools and LAs \(DfEE Circular 3/97\)](#)

[The Employment Equality \(Religion or Belief\) Regulations 2003](#)

[Early retirement arrangements for teachers \(DfEE Circular 15/97\)](#)

[Physical and mental fitness of teachers and of entrants to teacher training \(DfEE Circular 4/99\)](#)

[The Induction Support Programme for Newly Qualified Teachers \(DfES/0458/2003\)](#)

[Performance Management Guide for Governors \(DfEE, June 2000\)](#)

[Post-threshold standards assessment](#)

[School teachers' pay and conditions of service in England and Wales](#)

[Code of practice on LEA/school relations](#)

[Equal Opportunities Commission and Commission for Racial Equality: Codes of practice on eliminating discrimination and the promoting of equality of opportunity](#)

[Code of practice for the elimination of discrimination in the field of employment against disabled persons or persons who have a disability \(DfEE\)](#)

[Guidance on matters to be taken into account in determining questions relating to the definition of disability \(DfEE and Department of Social Security\)](#)

[Industrial action and the law \(Department of Business, Enterprise and Regulatory Reform\)](#)

[ACAS Codes of Practice:](#)



Advisory Conciliation and Arbitration  
Service (ACAS)  
Tel: 08457 47 47 47  
[www.acas.org.uk](http://www.acas.org.uk)

Equality and Human Rights Commission  
3 More London  
Riverside Tooley Street  
London, SE1 2RG  
Tel: 020 3117 0235  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

General Teaching Council for  
England  
Victoria Square House  
Victoria Square  
Birmingham, B2 4AJ  
Tel: 0870 001 0308  
Email: [info@gtce.org.uk](mailto:info@gtce.org.uk),  
[www.gtce.org.uk](http://www.gtce.org.uk)

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# 11 THE NEW RELATIONSHIP WITH SCHOOLS

## CHAPTER SUMMARY

This chapter explains what the New Relationship means for governors, specifically with respect to school self-evaluation and School Improvement Partners. Reference is also made to the School Profile and school inspection, but for more detailed information on these, see chapters 25 and 14, Providing Information and Inspection, respectively.

### OVERVIEW

1. The New Relationship with Schools is designed to give every school more autonomy to plan its own future improvement. The aim is to help schools raise standards with clearer priorities, reduced bureaucracy, better information for parents and a bigger role for school leaders in system-wide reform. As a result of these changes, schools will find it easier to get the support they need without having to duplicate bids, plans and reports. The school's governing body, working with its senior leadership team, should find it easier to set the strategy for the school.
2. The New Relationship aims to:
  - build the capacity of schools to improve by means of rigorous self-evaluation, stronger collaboration and effective planning for improvement;
  - enable talented school leaders to play a greater part in system-wide reform;
  - operate an intelligent accountability framework that is rigorous and has a lighter touch, giving schools, parents and pupils the information they need;
  - reduce unnecessary bureaucracy, making it easier for schools to get the support they need without having to duplicate bids, plans and reports (see chapter 25 of this Guide, Providing information);
  - improve data systems so that the most useful information on pupils' progress is in the hands of schools and those who work with them;
  - align better the priorities of schools and those of local and central government.
3. The statutory responsibilities of the governing body for the school's strategy, targets, budget and key policies are not altered by the New Relationship with Schools. The ability of the governing body to exercise these responsibilities is reinforced, not diminished, because:
  - it will be able to plan its future funding more effectively and with greater certainty through the introduction of multi-year school budgets;
  - it will have a clearer picture of its school's performance, with self-evaluation processes that are the starting point for each school's inspection and relations with its maintaining authority;
  - it will report publicly through a Profile (see chapter 25 of this Guide, Providing information, paragraphs 23–29) that provides a broader and fuller picture of the school, with standardised performance data automatically derived from central databases (this replaces the Annual Report to Parents and removes the requirement to hold an annual meeting with parents);
  - it will have reports from a nationally accredited, locally managed School Improvement Partner (SIP) on the school's performance and future priorities;
  - it will have the SIP's advice on the headteacher's performance for appraisal purposes;
  - shorter, sharper inspections will give it more frequent reports on the school's effectiveness, with less disturbance to the work of the school;
  - inspectors, SIPs and schools themselves will now use the same data, which will have more depth and focus, to assess the progress of pupils.

## SCHOOL SELF-EVALUATION

4. Rigorous school self-evaluation is the starting point for planning, inspection and relations with the maintaining authority, including the dialogue with the SIP. The senior management team should take the lead in carrying out self-evaluation and involve the governing body throughout the process. The final judgements, which are recorded on the Ofsted self-evaluation form (SEF), and the school plan arising from the self-evaluation process, should be agreed and signed off by the governors. It is expected that at least once a year the governing body would want to see and agree the SEF. The school plan should be monitored, evaluated, reviewed and adjusted as appropriate as part of the ongoing cycle of self-evaluation.
5. The process of self-evaluation should be designed by each school for its own circumstances. High-level guidance for schools, *Improving Performance through School Self-Evaluation and Improvement Planning*, can be found on the [TeacherNet website](#). It was issued jointly by the Department for Children, Schools and Families (DCSF) and Ofsted and focuses on how schools can get the best out of self-evaluation and use the findings effectively for school improvement
6. Governors continue to play an important part in the Ofsted inspection process (see chapter 14 of this Guide, Inspection) and will continue to have a duty to notify parents of the outcome of the inspection by sending them a full report.

## SCHOOL IMPROVEMENT PARTNERS (SIPs)

7. As part of the New Relationship, high-quality, nationally accredited SIPs have been appointed to all primary, secondary and special schools. Many of these are headteachers or have had recent headship experience. Their role is to challenge and support headteachers in their assessment of how well the school is performing and their planning for the future.
8. The governing body will receive a report directly from the SIP on the annual dialogue between him or her and the school about the performance of the school, based on its self-evaluation, plans and targets. The governing body retains responsibility for setting statutory targets.
9. Every governing body will be advised by their SIP on its management of the headteacher's performance and appraisal. This advice will cover the ground previously covered by the External Adviser with a specific remit for headteacher performance. SIPs are allocated to schools by Local Authorities following discussions with the schools.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the [GovernorNet website](http://www.governor.net), [www.governor.net](http://www.governor.net)**

# 12 ADMISSIONS

## CHAPTER SUMMARY

This chapter explains the legislation relating to school admissions and the responsibilities of the governing body and the Local Authority (LA) in each area of admissions law.

**N.B. Details regarding admissions to special schools are included in chapter 7 of this Guide, Children with special educational needs and other vulnerable children.**

### LEGISLATIVE FRAMEWORK

1. [The School Standards and Framework Act 1998](#) (“the 1998 Act”) introduced a new framework for school admissions that applied to admission arrangements for intakes from September 2000 onwards. The [Education and Skills Act 2008](#) (“the 2008 Act”), and five new sets of Regulations made in December 2008, strengthen this framework. An updated statutory [School Admissions Code](#) came into force on 10 February 2009 that imposes requirements and gives guidance to LAs and other admission authorities (see paragraph 4, below) on the law, and on the guiding principles of fair access to schools for all children, regardless of their background. LAs, governing bodies of maintained schools, admission forums, appeals panels and adjudicators must act in accordance with the Code.
2. Where mandatory requirements are imposed by the Code (or by statutory provisions), the Code states that the relevant bodies must comply. Where the Code prohibits practices or criteria, they must not be used. The Code also includes guidelines that the relevant bodies should follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where the guidelines refer to practices or criteria normally regarded as poor practice, but where there may be exceptional circumstances when they may be justified, the Code will state that they should not be used.
3. A new School Admission Appeals Code was also introduced on 10 February 2009 and has applied to appeal decisions communicated on or after that date. Governing bodies (and other specified bodies) must act in accordance with it.
4. This section of this Guide gives only very basic information on some key aspects of admissions. It must be read in conjunction with the Admissions Code and the Appeals Code, the relevant sections of the 1998 Act (as amended by the [Education Act 2002](#), the [Education and Inspections Act 2006](#) and the 2008 Act) and the associated admission Regulations listed below.

### RESPONSIBILITY FOR ADMISSIONS TO SCHOOL

5. Parents of children between the ages of 5 and 16 must ensure that their children receive suitable full-time education and LAs are responsible for ensuring that parents carry out this duty. A child reaches compulsory school age at the beginning of the term following his or her fifth birthday. LAs must also ensure that there are sufficient school places for the children in their area and take steps to address any shortfalls.
6. In community and voluntary controlled schools the LA is the admission authority and is responsible for school admissions (except where the LA has delegated this responsibility to the governing body with its agreement). The governing body must, by law, implement the LA’s decisions on individual applications and act in accordance with the LA’s admission arrangements. If it refuses, the LA can refer the matter to the Secretary of State for Children, Schools and Families, who may direct the governing body to comply with the LA’s decision under [Section 496 or Section 497 of the Education Act 1996](#). However, the governing body can appeal to an independent appeal panel where the LA has decided to admit a pupil who has been permanently excluded from two or more schools. In foundation and voluntary aided schools the governing body is the admission authority.

7. In foundation and voluntary aided schools, the governing body may delegate the function of determining applications for places in the school to a committee that will administer the admission process, as determined by the governing body, but not to an individual. It is considered good practice to appoint the headteacher onto an admissions committee, but headteachers cannot act in place of the governing body in determining the school's admission policy, or in deciding on the admission of any individual child.

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### CONSULTATION ON PROPOSED ADMISSION ARRANGEMENTS

8. Section 88C of the 1998 Act (inserted by the 2008 Act), and the School Admissions (Admission Arrangements) (England) Regulations 2008, require admission authorities in an area (including governing bodies of community and voluntary controlled schools with delegated responsibility for admissions) to consult on their admission arrangements, asking for views and comments on all aspects of their proposed admission arrangements, before determining the arrangements they intend to use. When doing so, admission authorities are now required to consult with relevant parents and other groups with an interest in the local area. [The School Admissions Code](#) gives further details of the bodies that LAs and other admission authorities must consult and how relevant parents and other groups can be identified. When considering which groups with an interest in the local area to consult, admission authorities should seek the views of the Admission Forum. Where an admission authority proposes an increase in the published admission number for a school in their admission arrangements, the trade unions representing staff at the school that may be affected by the changes must also be consulted.
9. The governing body of a foundation and voluntary aided school must also consult the governing bodies of community and voluntary controlled schools in the relevant area (see below). The governing body of Church of England schools must consult its diocesan Board of Education before consulting others. In addition, the admission authorities for all faith schools are required to consult the body or person representing their religion or religious denomination. All maintained school admission authorities are required to consult parents before determining their admission arrangements. Academies must consult locally as required by their funding agreements.
10. However, admission authorities are now only required to consult every three years, unless changes have been made to the arrangements since the previous consultation. Consultation must last at least eight weeks, start no earlier than 1 November and end by 1 March. After this, admission authorities must determine their admission arrangements by 15 April, notifying all those with whom they have consulted. This may be done by email. It is not sufficient for admission authorities to put any proposed or determined arrangements on their website alone.
11. Consultation on proposed admission arrangements should take place within an area called "the relevant area". The LA determines the relevant area after appropriate consultation with the other admission authorities in the locality and any neighbouring LAs. There may be more than one relevant area within the boundary of the LA. LAs should consult on and review their relevant areas every two years. Relevant areas should reflect parents' diverse preferences and children's travel-to-school patterns.

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### ADMISSION NUMBERS

12. A school must have an admission number for each "relevant" age group. A relevant age group is defined in law as "an age group in which pupils are or will normally be admitted to the school in question". It may be necessary for some schools to have more than one admission number. For example, where a secondary school operates a sixth form and admits other pupils from other schools at age 16, an admission number will be required for Year 12 as well as for the main year or years in which children join the lower school. Admission numbers must refer in each case to pupils to be admitted to the school for the first time. They should not include pupils transferring from earlier age groups. The one exception is in the case of a primary school making nursery provision, where the admission number will be the number of all children to be admitted to the Reception Year, including children who have attended the nursery.

13. Admission numbers should be set with regard to the capacity assessment for the school. The capacity of the school is the number of pupil places available. This is calculated by the “net capacity assessment formula”.
14. An admission authority can determine an admission number for a relevant age group lower than that indicated by the capacity formula, but if they do so, they must publish this information for parents who may object to the admission number. Admission authorities can also set a higher admission number than that indicated by the capacity assessment. However, in relation to admission numbers applicable to infant classes, the admission number must be compatible with the duty to comply with the infant class size legislation.
15. Admission authorities are required to consult before setting a published admission number. Pupils should not be admitted above the published number unless exceptional circumstances apply, and admission authorities must consider the overall effect on the school in continually admitting over this number. If admissions exceed the admission number by 26 or more in any three-year period, statutory proposals are no longer necessary, but the authority must determine a higher number at the next opportunity.

### **NOTIFICATION AND PUBLICATION OF INFORMATION**

16. An admission authority must send written notification, within 14 days of determining its admission arrangements, to all those with whom it was required to consult. Admission authorities which determine an admission number for any school that is lower than that indicated by the net capacity formula (set out in *Assessing the Net Capacity of Schools* issued by the Department for Education and Skills (DfES) in August 2002) must also publish a notice to explain this in a local newspaper. The notice must explain to parents that they have the right to object to the Schools Adjudicator about the lower admission number (see paragraph 17, below). The notification and publication requirements are set out in the School Admissions (Admission Arrangements) England) Regulations 2008.
17. Admission authorities of schools that determine to continue with partially selective admission arrangements that have been in force since the 1997–8 school year – and that could not now lawfully be introduced – must publish a notice summarising the effect of the selection arrangements each year. The notice must explain to parents that they have the right to object to the Schools Adjudicator about the continuation of the school’s selective admission arrangements.
18. LAs must also publish a notice in a local newspaper by 1 May each year, setting out the extent to which admission arrangements have been determined for maintained schools, Academies, CTCs and CCTAs in their area and the fact that copies of the determined admission arrangements are available for inspection. The notice must also explain how to refer objections to the Schools Adjudicator.

### **INFORMING PARENTS: PUBLICATION OF ADMISSION ARRANGEMENTS**

19. All admission authorities, including the governors of foundation and voluntary aided schools and of community and voluntary controlled schools with delegated responsibility for admissions, have a duty to publish details of the admission arrangements they have determined. LAs are under a specific duty (see the School Information (England) Regulations 2008) to publish information about admission arrangements for all the maintained mainstream schools, Academies, CTCs and CCTAs in their area in a composite prospectus by 12 September each year. Therefore, the governing bodies of foundation and voluntary aided schools must provide the LA with the information required for the prospectus. LAs must publish:
  - details of arrangements for enabling parents to express a preference for a particular school or schools (with an explanation of what they and LAs or schools should be doing at each stage of the admissions process, including all relevant timescales and deadlines);
  - information on how to take up their statutory right of appeal (see paragraphs 46–49 for more information on appeals);

## 12. ADMISSIONS

- details of how the coordinated admissions scheme will work for the LA's area and neighbouring areas;
  - any other information that they consider will be of interest to parents, for example information on application numbers and patterns of successful applicants (i.e. the criteria under which they were accepted) in recent years, to help parents assess their likelihood of a place being obtained at any preferred school.
20. Published admission arrangements must include the oversubscription criteria that will be used to allocate places if there are more applicants than places at a particular school. Composite prospectuses should also tell parents where and how to access other sources of information, such as the annual school achievement and attainment tables, as well as published reports of recent school inspections.
21. The governing body of a foundation or voluntary aided school (or a community or voluntary controlled school with delegated responsibility for admissions) must publish information about the school's admission and appeal arrangements and should also consider publishing other information of interest to parents. Information for parents should be clear, easy to understand and in an accessible format, including being published on the school's website. It will be the role of the Admissions Forum to consider the comprehensiveness and accessibility of all the published admissions literature and information for parents.

### **OBJECTIONS TO SCHOOL ADMISSIONS AND THE ROLE OF THE SCHOOLS ADJUDICATOR**

22. Section 88H of the 1998 Act (inserted by the 2008 Act) and the School Admissions (Admission Arrangements) (England) Regulations 2008, set out the types of objections that may, or may not, be made. The governing body of a foundation or voluntary aided school can object to the Schools Adjudicator about most aspects of the admission arrangements of other admission authorities. They can only object to the arrangements of a school within their own relevant consultation area. The governing bodies of community and voluntary controlled schools can object to the admission arrangements of other schools that are their own admission authority within the relevant consultation area. They can also object to the Schools Adjudicator about the admission number determined by the LA for their school, but not to any other aspect of the LA's admission arrangements for community and voluntary controlled schools.
23. The Schools Adjudicator may also hear objections from parents:
- in relation to pre-existing selection arrangements;
  - where a proposed admission number is lower than that indicated; or
  - where any aspect of a school's admission arrangements does not comply with a mandatory requirement of the Code or the 1998 Act.
24. Section 88P of the 1998 Act (inserted by the 2008 Act), and the School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008, requires all LAs to make a report to the Schools Adjudicator about the admission arrangements of schools in their area by 30 June each year. The report must include how admission arrangements have operated in the previous year and include a statement as to whether the admission arrangements determined for the following year comply with the requirements of the School Admissions Code and statutory requirements.
25. Section 88H of the 1998 Act (inserted by the 2008 Act) places a new duty on the Schools Adjudicator to consider the legality of admission arrangements referred to him via the LA or the Secretary of State. The Schools Adjudicator may also consider any admission arrangements that come to his attention by other means and that he considers may not comply with statutory requirements or the mandatory requirements of the School Admissions Code. The Schools Adjudicator must decide whether to uphold an objection, or whether the admission arrangements conform with the Code, as appropriate. The Schools Adjudicator may consider the admission arrangements for the school as a whole



and not just the specific subject of the objection or referral, and the effect of these in the context of all the admission arrangements in the area. More details about the role of the Schools Adjudicator can be found in the School Admissions Code by downloading a copy from [www.dcsf.gov.uk/sacode](http://www.dcsf.gov.uk/sacode).

### VARIATION TO DETERMINED ADMISSION ARRANGEMENTS

26. Section 88E of the 1998 Act (inserted by the 2008 Act) and the School Admissions (Admission Arrangements) (England) Regulations 2008, allow for the variation of admission arrangements once they have been determined if there has been a significant change of circumstances. [The School Admissions Code](#) provides examples of what these might be and details of what admission authorities should do if they then want to vary their admission arrangements. This will involve referring the proposed variations to the Schools Adjudicator and notifying all the bodies that were, or should have been, consulted before the arrangements were determined. There are circumstances which may not require a request to the Schools Adjudicator for a variation, for example where a misprint occurred in the published arrangements.
27. The alteration of admission arrangements following the establishment or expansion of a maintained school is restricted. They may not be altered for that school year, or for two years subsequent to that. In addition, once the Adjudicator has determined an objection to admission arrangements, the relevant provisions must be incorporated into the school's admission arrangements for two subsequent school years.
28. Admission authorities should consider variations to admissions arrangements very carefully before referring them to the Schools Adjudicator, and should not do so once parents have been asked to express their preferences for particular schools, unless a major change in circumstances makes this necessary. In addition, an admission authority may vary its admission number, irrespective of whether such a variation constitutes a major change, where such a variation is necessary to implement proposals published under [Section 19 of the Education and Inspections Act 2006](#). However, where the LA proposes to modify the admission number stated in the proposal, the variation must be referred to the Schools Adjudicator under Section 88E.

### REVISION OF DETERMINED ADMISSION ARRANGEMENTS

29. Section 88K(4)(d) of the 1998 Act (inserted by the 2008 Act) and the School Admissions (Admission Arrangements) (England) Regulations 2008 allow an admission authority to revise its admission arrangements if it believes it needs to do this because of a decision by the Schools Adjudicator relating to another admission authority's admission arrangements. If an admission authority needs to revise its arrangements in these circumstances, it must do so within two months of the decision being made. It must also notify each of the admission authorities with which it was required to consult on the revised arrangements it wants to use.

### PARENTAL PREFERENCE

30. LAs have a specific duty under Section 86 of the 1998 Act to make arrangements enabling parents to express a preference for the school they would like their child to attend and to give reasons for that preference. In relation to admission to the school year 2010-11 there is an additional duty, in Section 86A (inserted by the 2008 Act), to make arrangements for certain children to express a preference as to the school at which they wish to receive education. LAs and the governing bodies of all schools must comply with an expressed preference unless certain specified circumstances apply. In most cases, preferences are refused because the school is full, or, in legal terms, because complying with the preference would prejudice the provision of efficient education or the efficient use of resources (which includes circumstances where to admit would be incompatible with the duty to meet class-size limits). However, admission authorities of selective schools can refuse to comply if their specific selective criteria are not met.

## 12. ADMISSIONS

31. Other specified circumstances where LAs and governing bodies can refuse to comply with an expressed preference, are:
- where another place has been offered, as identified under co-ordinated admission arrangements;
- or:
- where the child has been permanently excluded from two or more schools;
- and
- where at least one of the exclusions took place after 1 September 1997, and at least one of the exclusions took place within the preceding two years.

N.B. Since the 2004–05 school year, if the expressed preference is for a school which has a religious character, the admission authority has been unable to refuse to comply if there are places available at the school simply because the parent does not meet its denominational criteria.

### CO-ORDINATED ADMISSION SCHEMES

32. Under Sections 88M and 88N of the 1998 Act (inserted by the 2008 Act) LAs are required to draw up a scheme to co-ordinate admissions to every mainstream maintained school within its area. Regulations and the [School Admissions Code](#) provide details on these schemes.
33. The revised School Admissions Code and the School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008 make the following changes to coordination schemes.
- From the beginning of the 2010/2011 school year, LAs will be required to coordinate in-year admissions, as well as applications for admission made during the normal admissions round.
  - In respect of admissions for the 2011/2012 school year onwards, the coordination arrangements for primary admissions will be brought more in line with those for secondary schools, i.e. parents will apply to their home LA and will be able to express a minimum of three preferences.
  - Also in respect of admissions for the 2011/2012 school year onwards, the regulations set more key dates nationally. The national closing date for applications to secondary schools will be 31 October and the national closing date for applications to primary schools will be 15 January.
  - All admission authorities are now required to keep waiting lists for at least one term in the normal year of admission.
34. Under the new arrangements, parents will send in one application form to the LA in which they are resident, regardless of whether they are applying for a primary or secondary school and regardless of where the school is located. Subsequently they will receive one offer of a place. Offers of secondary school places are made on 1 March. Offers of primary school places are made by the LA on a date that they determine themselves.
35. LAs draw up schemes in consultation with all other local admission authorities in their area. Voluntary aided and foundation schools, together with community and voluntary controlled schools with delegated authority for admissions, still determine and apply their own admission arrangements, including oversubscription criteria, but rank the list of children who have applied for their school in order of priority and give this to their LA, so that the LA can eliminate multiple offers in accordance with the agreed scheme.

## Timetable for consultation and co-ordination for admission in 2011/2012 school year onwards

Date	Action
1 November (In the determination year, i.e. the academic year before the offer year)	Earliest date for admission authorities to start consultation on their proposed admission arrangements
1 January each year	Date by which LA must have formulated a coordinated scheme and referred it to the Admission Forum
1 March each year	Date by which all admission authorities must have completed consultation on proposed admission arrangements for individual schools (should allow at least one month)
Between 1 January and 15 April each year	If the Admission Forum is of the view that the scheme has changed significantly since the previous year, or if three years have passed since the scheme was last consulted on, LA consults governing bodies and agrees co-ordinated scheme
15 April each year	Date by which LA must have informed Secretary of State that they have adopted a coordinated scheme and provided copy
15 April each year	Date by which admission authorities must have determined their admission arrangements
Within 14 days of determination date	Admission authorities notify details of determined admission arrangements to LAs and admission authorities who were consulted
8 August (In the offer year i.e. the school year in which offers of places are sent)	Date by which each governing body must have provided information to the LA for composite prospectus entry
12 September	Last date by which LA must have published their composite prospectus
31 October	Last date for parents to express their preferences for secondary schools
15 January	Last date for parents to express their preferences for primary schools
Date specified in scheme	LAs pass applications to foundation/voluntary aided schools
Date specified in scheme	Foundation and voluntary aided schools pass their lists of pupils to be offered places to LAs
Date specified in scheme in respect of secondary applications. By last working day in March in respect of primary applications.	LAs inform other LAs of offers to be made to their residents
Date specified in scheme	Schools told by own (home) LA of final result including any offers to pupils in other LAs
1 March	Home LA offers places at secondary schools to parents
Date specified in scheme	Home LA offers places at primary schools to parents
Date decided locally (the admission authority will publish a deadline, which should not be less than 10 working days from the date parents were notified their application was unsuccessful)	Parents make their appeals (where relevant)

N.B. See [Appendix 2 of the School Admissions Code](#) for further information on co-ordinated admission arrangements.

### ADMISSION FORUMS

36. Section 85A of the 1998 Act requires all LAs to establish an Admission Forum. Admission Forums provide a vehicle for admission authorities and other key interested parties to discuss the effectiveness of local admission arrangements, consider how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Their main focus is to consider the fairness of arrangements in their local context. Admission authorities of all maintained schools and Academies, when exercising their functions, must have regard to any advice offered by the Forum. LAs may establish a joint forum with one or more other LAs to consider advice on admissions in more than one authority area. Admission Forums must reflect the needs of their local community.
37. The membership of Admission Forums is set out in The School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008 and their membership must reflect the types of schools in the locality. This must include:
- a representative from each faith group represented by schools in the area;
  - parent and community representatives;
  - up to two LA representatives (as the admission authority for community and voluntary aided schools);
  - local employers and other representatives which could include Service Personnel and Choice Advisers.
38. Admission Forums have a key role in ensuring a fair admissions system that promotes social equity and must, under Section 84 of the 1998 Act, act in accordance with the School Admissions Code. Part of their role is to advise LAs and admission authorities on matters relating to school admissions. Any advice they give must be made available to any person with an interest. Forums allow admission authorities and other key interested parties to get together to:
- consider how well existing and proposed admission arrangements serve the interests of children and parents within the area of the LA;
  - promote agreement on admission issues;
  - review the comprehensiveness and effectiveness within the local context;
  - review accessibility of advice and guidance for parents by the LA both through the published composite prospectus and the delivery of Choice Advice within the area of the Forum.
39. In addition, Forums:
- consider the effectiveness of the LA's proposed coordinated admission arrangements;
  - advise on whether the LA's proposed coordinated admission arrangements differ substantially from the previous year;
  - consider the means by which admission processes might be improved and how actual admissions relate to the admission numbers published;
  - monitor the admission of children who arrive in the authority's area outside a normal admission round with a view to promoting arrangements for the fair distribution of such children among local schools.
40. They must also:
- take account of any preference expressed in accordance with arrangements made under Section 86(1) of the 1998 Act (i.e. parental preference) and in accordance with the School Admissions Code;
  - promote the arrangements for children with special educational needs (SEN), children in care and children who have been excluded from school;
  - monitor the effectiveness of the LA's Fair Access Protocol;

- consider any other admissions issues that may arise.
41. Forums should also refer an objection to the Schools Adjudicator where they identify that the admissions policy, practice or oversubscription criteria of a school may be unfair, unlawful or contravenes the mandatory provisions of the School Admissions Code, or where it is felt that its advice had been disregarded by admission authorities.
42. Forums have an important power (under Section 85A) (1A) of the 1998 Act to produce an annual report for all maintained schools and where they choose to do so, the report must include Academies. They are not expected to produce complex reports that duplicate the LA report to the Schools Adjudicator on admission arrangements in their area. They should report as they see fit on matters that are of local interest and can feed into the LA report. The power for Forums to report to the Schools Adjudicator replaces the power to report to the Schools Commissioner. More details about the role of Admission Forums can be found in the School Admissions Code by downloading a copy from [www.dcsf.gov.uk/sacode](http://www.dcsf.gov.uk/sacode).

### **LOOKED-AFTER CHILDREN (LAC)**

43. The School Admissions (Admission Arrangements) (England) Regulations 2008 require admission authorities to give first priority to looked-after children (LAC) in their oversubscription criteria. There are some permitted exceptions to this.
- Faith schools are required to give first priority to LAC of their faith, ahead of other applicants of their faith, then to LAC not of their faith ahead of others not of their faith. However, this is a minimum requirement and faith schools may choose to give first priority to all LAC, regardless of faith, over other applicants.
  - Designated grammar schools must give first priority to LAC who meet the academic requirements.
  - Schools with pre-existing arrangements for partial selection must give first priority to LAC who meet the ability or aptitude criteria before other children who have been selected on that basis. LAC who have not been allocated a place on the basis of their ability or aptitude have higher priority than all other such children.
  - Schools that select by pupil banding must give first priority to LAC within each band over other children eligible for a place in that band.
44. Under Section 97A of the 1998 Act, outside the normal admissions round, LAs may direct another admission authority for any maintained school to admit a child in their care to the school best suited to his or her needs. Before giving a direction, the LA must consult the admission authority for the school they propose to specify in the direction. The admission authority then has seven days to inform the LA if it is willing to admit the child without being directed to do so, or, if the admission authority is unwilling to admit the child, they must refer the matter to the Adjudicator within this period.

### **INFANT CLASS SIZES**

45. Under Section 1 of the 1998 Act, and subject to certain limited exceptions set out in the Education (Infant Class Sizes) (England) Regulations 1998, infant classes (i.e. classes in which the majority of children reach the age of 5, 6 or 7 during the school year) may not contain more than 30 pupils with a single teacher. There are therefore special arrangements regarding admission appeals where the admission authority has refused to admit a child on the grounds that to do so would cause “class size prejudice” (see the [Education \(Admissions Appeals Arrangements\) \(England\) Regulations 2002](#)). Class size prejudice arises where, if the child were admitted to the school, the admission authority could only comply with the infant class size legislation by taking qualifying measures, i.e. building an extra classroom and/or employing an additional teacher. In such cases an appeal panel must offer a place to a child only where it is satisfied that:
- the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case; the child would have

been offered a place if the school's admission arrangements had been properly implemented; or

- the child would have been offered a place if the school's admission arrangements had complied with the requirements of the School Admissions Code and the 1998 Act.

Detailed guidance is set out in the Admission Appeals Code.

### ADMISSION APPEALS

46. Under Section 94 of the 1998 Act, admission authorities are required to establish appeal panels; parents, and where relevant, children, can appeal to such a panel against refusal of admission to a school (this applies both to those transferring from within the school and to external candidates). In the case of foundation and voluntary aided schools this duty falls on the governing body as the admission authority. For community and voluntary controlled schools it is the responsibility of the LA even where the governing body has delegated responsibility for admissions. Where a panel finds in favour of the parent or child, the decision is binding on the admission authority. Where the admission authority is the LA it is also binding on the governing body of the school concerned. Although the governors of foundation and voluntary aided schools are responsible for establishing admission appeal panels, the panel membership is independent from the school's governing body that made the original decision, as well as from the LA which maintains the school.
47. [The Education \(Admissions Appeals Arrangements\) \(England\) Regulations 2002 – as amended](#) – specify how panels should be constituted and set out an admission authority's duty to advertise for lay members at least every three years. Details of appeal arrangements are set out in the School Admission Appeals Code, recently updated to account for children's right of appeal as regards school sixth-forms, and clarification of some aspects of the Code as regards panels' deliberations and attendees at appeal hearings.
48. The governors of foundation and voluntary aided schools can make joint appeal arrangements with their LA and with other such schools, and invite local independent or religious bodies to administer these collectively on their behalf. Recruitment and training of appeal panel members is the responsibility of the admission authority.
49. The governing body of a community or voluntary controlled school has the right of appeal against an LA decision to admit a child to its school who has been twice permanently excluded in a two-year period beginning on the date on which the latest of these exclusions took place. Further guidance on these appeals is set out in the [Appeals Code](#).

### WAITING LISTS

50. Oversubscribed schools must keep a waiting list for at least one term in the academic year of admission, with places which become available offered in line with the school's published admission arrangements. If new applicants have a higher priority under the oversubscription criteria, they should be ranked higher than those who have been on the list for some time. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

### PARTIAL SELECTION

51. The [1998 Act](#) prevents the introduction of new academic selection except in the limited circumstances of sixth forms and to introduce fair banding arrangements. Existing partial selection on the basis of academic ability can continue provided it was in place at the beginning of the 1997–8 school year. New partial selection on the grounds of aptitude is permitted in limited circumstances and where the school has an agreed specialism. Schools already selecting on the grounds of aptitude for design and technology or ICT before the 2008 school year may continue to do so, but no further selection in these subjects can be introduced in respect of subsequent years.

## NURSERY ADMISSIONS

52. The legislation that applies in relation to admissions to primary and secondary schools generally does not apply to nursery schools or to children admitted to the nursery class of a maintained school. However, amendments made by the [Education Act 2002](#) clarify that the governing body is responsible for taking decisions about admissions to the nursery class in the case of foundation and voluntary aided schools, and in those community and voluntary controlled schools with delegated responsibility for admissions. The LA is responsible for deciding admissions to nursery classes in other community and voluntary controlled schools.
53. The admission authority should determine separate admission arrangements for the nursery class. A place in a nursery class does not guarantee admission to the reception class. The infant class size limit applies only to classes at maintained schools containing pupils of whom the majority will attain the ages of five, six and seven during the course of the school year. Therefore, the infant class size limit will not apply to nursery classes where the majority of pupils attending that class are below the age of five years. However, separate requirements are imposed by the Early Years Foundation Stage.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The provisions concerning admission arrangements can be found in Sections 1, and 84–109 of the [School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#), the [Education and Inspections Act 2006](#) and the [Education and Skills Act 2008](#).

### Main Regulations

The [Education \(Infant Class Sizes\) \(England\) Regulations 1998](#): SI 1998/1973, amended by:

The [Education \(Infant Class Sizes\) \(England\) \(Amendment\) Regulations 2006](#): SI 2006/3409

The [Education \(Relevant Areas for Consultation on Admission Arrangements\) Regulations 1999](#) (SI 1999/124)

The [School Admissions \(Admission Arrangements\) \(England\) Regulations 2008](#) (SI 2008/3089)

The [School Admissions \(Co-ordination of Admission Arrangements\) \(England\) Regulations 2007](#) (SI 2007/194) (NB These regulations are revoked in relation to 2011-2012 onwards).

The [School Admissions \(Co-ordination of Admission Arrangements\) \(England\) Regulations 2008](#) (SI 2008/3090)

The [School Admissions \(Local Authority Reports and Admission Forums\) \(England\) Regulations 2008](#) (SI 2008/3091)

The [New School \(Admissions\) \(England\) Regulations 2003](#) (SI 2003/1041)

The [Education \(Admissions Appeals Arrangements\) \(England\) Regulations 2002](#) (SI 2002/2899), amended by The [Education \(Admissions Appeals Arrangements\) \(England\) \(Amendment\) Regulations 2007](#) (SI 2007/3206), The [Education \(Admissions Appeals Arrangements\) \(England\) \(Amendment\) Regulations 2008](#) (SI 2008/3092) and The

## 12. ADMISSIONS

Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2009 (SI 2009/25)

The Education (Substituted Grammar Schools) Regulations 1999 (SI 1999/2102)

The Education (Grammar School Ballots) Regulations 1998 (SI 1998/2876)

The Education (Proposals for Grammar Schools to cease to have Selective Admission Arrangements) Regulations 1999 (SI 1999/2103)

The School Information (England) Regulations 2008 (SI 2008/3093)

The Information as to Provision of Education (England) Regulations 2008 (SI 2008/4)

### **Also of relevance**

The Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751)

The Education (Areas to which Pupils and Students Belong) Regulations 1996 (SI 1996/615)

The Education (Middle Schools) (England) Regulations 2002 (SI 2002/1983)

The Education (School Sessions and Charges and Remissions Policies) (Information) (England) Regulations 1999 (SI 1999/2255)

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289)

The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (SI 2007/1288)

### **GUIDANCE**

Free training packs for appeal panel members are available from:

Information for School and College Governors (ISCG)  
Avondale Park School  
Sirdar Road  
London W11 4EE

Key documents providing more detailed guidance on admission arrangements include:

The [School Admissions Code](#)  
The [School Admission Appeals Code](#)

Both these documents can be accessed at the DCSF website at [www.dcsf.gov.uk/sacode](http://www.dcsf.gov.uk/sacode)

Copies of the Schools Admissions Code are available from TSO (The Stationery Office) at [www.tsoshop.co.uk](http://www.tsoshop.co.uk) Telephone orders and general enquiries can be made on 0870 600 5522 or by email to [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Copies of the School Admission Appeals Code of Practice are available from:

DCSF Publications  
PO Box 5050  
Sherwood Park  
Annesley  
Nottingham NG15 0DJ  
Tel: 0845 602 2260  
Fax: 0845 603 3360  
Textphone: 0845 605 5560  
Email: [dcsf@prolog.uk.com](mailto:dcsf@prolog.uk.com)

Guidance on managing compliance with the infant class size duty is available at: [www.dcsf.gov.uk/sacode](http://www.dcsf.gov.uk/sacode)



# 13 BEHAVIOUR AND ATTENDANCE

## CHAPTER SUMMARY

This chapter concerns the procedures for excluding pupils either for a fixed period or permanently. These procedures are the same for all maintained schools. Certain fixed-period exclusions and all permanent exclusions must be reviewed by the governing body. Governors have a role in representing the school before an independent appeal panel at the hearing for a parent's appeal against their child's permanent exclusion. Separately, governors may volunteer to be members of such an appeal panel not involving their own school. Guidance on exclusion is available on the [TeacherNet website](#).

The chapter also explains the systems and procedures that schools should have in place for encouraging school attendance and investigating the underlying causes of poor attendance. It sets out the legal requirements relating to pupil registration – the content of the admissions and attendance register, how to record absence, when to notify the Local Authority (LA), etc. It also sets out the legal requirements for school attendance targets, the collection of absence data and the use of parenting contracts, parenting orders and penalty notices.

## LEGISLATION

### General responsibility of the governing body for school discipline

1. [Section 88](#) of the Education and Inspections Act 2006 requires every governing body to ensure that its school pursues policies designed to promote good behaviour and discipline among pupils. In particular it requires governing bodies to:
  - make, and from time to time review, a written statement of principles to guide the headteacher in determining the measures that make up the school's behaviour policy;
  - consult the headteacher, other appropriate members of staff, parents and all pupils on this statement of principles.

In making or reviewing its statement of principles, the governing body must have regard to [School Discipline and Pupil-Behaviour Policies: Guidance for Schools](#), issued by the Secretary of State.

2. The Education and Skills Act 2008 amends section 29 of the Education Act 2002 to introduce a power for governing bodies to arrange for registered pupils to be directed off-site in order for them to receive educational provision which is intended to improve their behaviour, for example to attend courses in anger management.

Regulations require that governing bodies must:

- provide written notice to the parent, or pupil if 18 or over, of the off-site direction at least two school days before the educational provision is due to start;
- hold a review meeting within 30 days of the pupil being directed off site, and at least every 30 days thereafter;
- invite a representative from the local authority to a review meeting where the pupil has a statement of special educational needs.

Further guidance is available in Part 2 of [Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units](#), September 2008.

## EXCLUDING PUPILS

3. The Education Act 2002 (“the Act”) ([Section 52](#)) and Regulations (“the Regulations”) made under the Act, namely the [Education \(Pupil Exclusions and Appeals\) \(Maintained Schools\) \(England\) Regulations 2002](#), SI 2002/3178 govern the exclusion of pupils from

maintained schools. “Exclude” means exclude on disciplinary grounds. There are two categories of exclusion: fixed-period or permanent. Pupils may also be excluded from the school premises for the duration of the lunchtime break between the morning and afternoon school sessions and this is a fixed-period exclusion.

4. The Regulations require governing bodies, headteachers, LAs and appeal panels in discharging their functions under the Regulations to have regard to guidance given by the Secretary of State for Children, Schools and Families. The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 (SI 2008/532) impose similar duties on management committees in regard to exclusions from PRUs to those which apply to the governing bodies of mainstream schools, mainly in relation to reviewing decisions to exclude pupils.
5. Although the Act defines “exclude” as meaning simply exclude on disciplinary grounds (without specifying any degree of seriousness), the DCSF guidance states that exclusion is a serious step. Exclusion should be used only in response to serious breaches of the school’s discipline policy and only after a range of alternative strategies to resolve the pupil’s disciplinary problems have been tried and proven to have failed. It should also only be used where allowing the pupil to remain in school would be seriously detrimental to the education or welfare of other pupils, or of the pupil himself or herself, or to the welfare of staff. However, the current guidance does indicate that there may be circumstances where, in the headteacher’s judgement, it is appropriate to permanently exclude a child for a first or one-off offence. These might include:
  - serious actual or threatened violence against another pupil or a member of staff;
  - sexual abuse or assault;
  - supplying an illegal drug;
  - carrying an offensive weapon.
6. Informal or unofficial exclusions are illegal and schools may be legally liable if they exclude pupils unofficially.
7. The [Education and Inspections Act 2006](#) requires schools to hold reintegration interviews with parents following some fixed-period exclusions (see paragraph 24, below) and to provide suitable full-time education to pupils from the sixth day of any fixed-period exclusion (see paragraphs 25–27, below).

#### **Procedures for exclusion: action by the headteacher**

8. Only the headteacher (or acting headteacher) has the power to exclude a pupil from school. He or she may not delegate that power to someone else. The headteacher may exclude a pupil for one or more fixed periods not exceeding a total of 45 school days in any one school year (for this purpose a lunchtime exclusion counts as a half-day). He or she may also exclude a pupil permanently, and may, in exceptional circumstances, also convert a fixed-period exclusion into a permanent exclusion if he or she decides the circumstances warrant this.
9. In all cases the headteacher must promptly:
  - officially inform the pupil’s parent of the period of the exclusion, or that the exclusion is permanent;
  - give the reasons for the exclusion;
  - advise the parent that he or she may make representations about the exclusion to the governing body;
  - advise the parent how and to whom his or her representations may be made;
  - advise the parent of the days on which he or she will be responsible for ensuring the pupil is not found in a public place (see paragraph 24, below);
  - if applicable, advise the parent of the latest date by which the governing body must meet to consider the circumstance of the exclusion of more than five days in one term either where the parent has requested a meeting or where the exclusion would result in the pupil missing a public examination;

### 13. BEHAVIOUR AND ATTENDANCE

- in the case of a fixed-term exclusion, advise the parent of the date and time when the pupil should return to school;
- advise the parent of any alternative educational provision, including location, dates of attendance and so on. (This must be provided from the sixth day of any exclusion, but can be provided earlier. See paragraphs 25–27.)
- If appropriate, advise the parent of the date, time and details of the reintegration interview.

N.B. Throughout this section, for “parent” read “pupil” if the pupil is aged 18 or over.

10. The headteacher should immediately notify within a school day both the LA (i.e. the school’s maintaining authority) and the governing body of the details of the exclusion, including the reason for it in the case of:
- permanent exclusions and fixed-period exclusions which are converted to permanent exclusions;
  - fixed-period exclusions totalling more than five school days in any one term;
  - any exclusion that would result in the loss of an opportunity to take a public examination.

#### **Procedures for exclusion: action by the governing body**

11. The governing body itself (or its discipline committee where one is in place) has no power to exclude a pupil, nor can it make the headteacher’s original exclusion more severe by extending the period of a fixed-period exclusion, or by converting a fixed-period exclusion to a permanent exclusion. The governors’ role is essentially one of reviewing the headteacher’s exclusion decisions.
12. It is very important that governors who are called to review exclusion decisions receive training to equip themselves to discharge their duties properly. We expect the LA to organise training sessions on exclusion issues and relevant governors should make every effort to attend. If any governor has a connection with the pupil or knowledge of the incident which could affect his or her ability to act impartially, he or she should step down.
13. If the governing body decides to establish a discipline committee it should consist of at least three members. The governing body should appoint a clerk to the committee. The headteacher may not be a member. In cases of:
- permanent exclusions and fixed-period exclusions converted to permanent exclusions;
  - all fixed-period exclusions totalling more than 15 school days in any one term;
  - fixed-period exclusions totalling more than five school days in any one term, where the parent expresses a wish to make representations to the governing body;
  - exclusions that would result in the loss of an opportunity to take a public examination;

the governing body (or discipline committee) must meet to:

- consider the circumstances in which the pupil was excluded;
  - consider any representations about the exclusion made by the parent and by the LA;
  - consider whether the pupil should be reinstated immediately, reinstated by a particular date or not reinstated.
14. In the case of permanent exclusions and fixed-period exclusions totalling more than 15 school days in a term, the parent and the pupil (subject to their age and understanding) should be allowed to attend the meeting and make representations in person.
15. In the case of a fixed-period exclusion that would result in the pupil being excluded from the school for a total of five school days or less in any one term, the governing body (or discipline committee) must meet to consider any representations made by the parent. In

such cases, the governing body cannot direct reinstatement of the pupil but can give its view on the appropriateness of the exclusion, a note of which may be added to the pupil's school record.

16. The Regulations set time limits for the governing body's consideration of exclusions. In the case of permanent exclusions and one or more fixed-period exclusions totalling more than 15 school days in any one term, it must consider them no earlier than six school days and no later than 15 school days after receiving notification of them. In the case of one or more fixed-period exclusions totalling more than five (but not more than 15) school days in any one term, where the parent wishes to make representations, the governing body must convene a meeting between the 6th and the 50th school day after receiving notification of the exclusion. Where a pupil may miss a public examination as a result of the exclusion, the governing body must, if practical, consider the exclusion before the date on which the pupil is due to take the examination. There is no automatic right for an excluded pupil to take a public examination or National Curriculum Test on the excluding school's premises; that is entirely at the governing body's discretion. In the case of a fixed-period exclusion that results in a pupil being excluded from school for a total of five school days or less in a term, and the parent wishes to make representations to the governing body, there is no statutory time limit, but the governors would be expected to meet within a reasonable timescale.
17. In reaching its decision on whether to direct reinstatement, the governing body (or discipline committee) is required to have regard to guidance given by the Secretary of State for Children, Schools and Families. Governors should consider any representations made by the parent and the LA, as well as whether the headteacher has complied with the exclusions procedure and has had regard to the Secretary of State's guidance. If the governors decide that a pupil should not be reinstated they must inform the parent, the headteacher and the LA of their decision forthwith. In the case of a permanent exclusion they must notify the parent in writing of their decision and the reasons for it. Their letter must also advise the parent of his or her right to appeal against their decision, whom to contact, the last date for lodging an appeal, and that the notice of appeal should set out the grounds of appeal. A copy of the decision should be placed on the pupil's school record. Exclusion can only be expunged from the pupils' school record through direction from the courts or rectification of personal data.

#### **Procedures for exclusion: the independent appeal panel**

18. Where the governing body has upheld a permanent exclusion the parents may appeal against its decision. The Schedule to the Regulations governs appeals against exclusion of pupils. No appeal may be made by the parent after the 15th school day after the day on which the parent was given notice in writing of the governing body's decision.
19. The LA must establish an appeal panel consisting of three or five members. One member must be a lay member who takes the chair. Another member (or, in the case of a five-member panel, two members) must be, or have been within the last five years, a headteacher of a maintained school. The other member (or, in the case of a five-member panel, two members) must be, or have been within the last six years, a governor of a maintained school who has served as a governor for at least 12 consecutive months and has not been a teacher or headteacher during the last five years. Local Authorities must ensure that all panel members receive suitable training. It is mandatory that new clerks and new panel members satisfy the training requirement before they serve as set out in the regulations.
20. A parent's appeal must be heard no later than the 15th school day after the day on which his or her appeal was lodged, although the panel may adjourn. The appeal panel must give the parent the opportunity to attend and make oral representations. The parent may be represented or accompanied by a friend. The pupil should be encouraged to attend and to speak on his or her own behalf, if he or she wishes to do so and subject to his or her age and understanding.
21. The panel must allow the headteacher to make written representations and to attend and

make oral representations. The headteacher may be represented or accompanied by a friend. It must also allow the LA and the governing body to make written representations and to be represented by an officer of the LA (nominated by the LA) or a governor (nominated by the governing body), who may attend and make oral representations. The panel may decide:

- to uphold the exclusion;
  - to direct reinstatement;
  - that because of exceptional circumstances or other reasons, it is not practical to direct reinstatement, but that it would otherwise have been appropriate to do so.
22. The panel must give its decision in writing to the parent, the LA, the governing body and the headteacher by the end of the second working day after the conclusion of the appeal hearing. If a permanent exclusion is upheld, and if the pupil lives outside the area of the LA arranging the appeal, the clerk should ensure that the home LA is informed immediately so that it can make arrangements for the pupil's education.
23. The decision of the panel is binding on the parties. If the parent considers that there was maladministration by the appeal panel, he or she may make a complaint to the Local Government Ombudsman and if either the parent or the governing body considers the panel's decision perverse, they may seek judicial review. The Secretary of State for Children, Schools and Families has no powers to quash or amend the decision of an appeal panel.

#### **Reintegration interview**

24. [Section 102](#) of the Education and Inspections Act 2006 requires the headteacher to arrange a reintegration interview with parents following the expiry of any fixed-period exclusion of a primary-aged pupil, or of an exclusion for more than five school days of a secondary-aged pupil. The interview should normally be conducted by the headteacher or a senior member of staff and its purpose is to assist the pupil's reintegration and engage the parents in promoting the improvement of his or her behaviour. A parent's failure to attend may be a factor taken into account by a court when considering whether to impose a parenting order, if one is applied for at some future time.

Further guidance on this can be found in *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, September 2008.

#### **Provision of suitable full-time education to excluded pupils**

25. [Section 100](#) of the Education and Inspections Act 2006 requires maintained schools to provide suitable full-time education to excluded pupils from the sixth school day of any fixed-period exclusion. Likewise, under [Section 101](#) LAs will have to provide such education from the sixth day of any permanent exclusion. Schools or LAs may, if they wish, provide education to excluded pupils earlier than day six. During the first five days of any exclusion the parents will be responsible for ensuring that their child is not found in a public place during school hours without reasonable justification. Failure to do so may result in the parent incurring a £50 penalty notice. Penalty notices can only be issued in this situation if the LA has published a local code of conduct.
26. Schools may use a range of different types of provision for excluded pupils, for example, facilities at other schools in the area, a shared joint facility, pupil referral units (in conjunction with the LA), private providers, local Further Education Colleges and, with appropriate supervision, ICT provision. However, provision must not be made at the excluding school unless it is made in a facility on the school site for educating excluded pupils which the school shares with at least one other school. All secondary schools should be working together in partnerships to improve behaviour and tackle persistent absence. This should better enable them to commission a wide range of suitable provision to meet the needs of excluded pupils and those at risk of exclusion. Further guidance about exclusion is available on the [TeacherNet website](#).
27. Failure to fulfil the duty to provide suitable full-time education to pupils excluded for fixed

periods may result in action being taken against the school. The DCSF has included governors in national communications about this, but the school leadership team should work with the governing body so that they have a shared understanding of the local arrangements for making this provision.

### Money following the child

28. Legislation provides for funding to follow a pupil who has been permanently excluded. The amount to be transferred to the new education provider is calculated in accordance with the formula laid down in the [Education \(Amount to Follow Permanently Excluded Pupil\) Regulations 1999](#) (as amended) and the [School Finance \(England\) Regulations 2008](#). The effective date of exclusion used for calculating the amount to follow is the sixth school day following the exclusion. This came into effect on 1 September 2007.

### SCHOOL ATTENDANCE

29. Schools should have effective systems and procedures for encouraging regular school attendance, investigating and resolving the underlying causes of poor attendance, and for early identification of persistent absent pupils and prevention of their absence. These should be set out in an attendance policy.
- These systems should be reviewed regularly and modified where necessary to reflect the circumstances of the school.
  - Parents should be aware of the school attendance policy and should be encouraged to co-operate with the systems and procedures that the policy describes.
  - A good attendance policy should clearly set out staff roles and responsibilities for dealing with attendance, and should link to the school's behaviour and bullying policies.
  - The attendance policy should reflect the LA's attendance strategy and should be endorsed by the school governors.
30. Governors should take a close and regular interest in attendance issues and should ensure that school leaders take appropriate action on attendance. Information and advice, along with examples of effective practices, are available on the [DCSF School Attendance website](#).

### Attendance and admissions records

31. Under the [Education \(Pupil Registration\) \(England\) Regulations 2006](#) the governing body is responsible for making sure that admissions and attendance registers are kept. Unless stipulated each regulation applies to all schools in England.
32. A pupil is placed on the admission and attendance registers on the first day that they are expected to attend.
33. An admissions register must contain an index in alphabetical order of all the pupils that attend school and, in relation to each pupil, the following information:
- full name
  - sex
  - the name and address of each parent and the parent or guardian with whom the child resides, and a telephone number of a parent in case of emergency
  - date of birth
  - the date of admission or re-admission
  - the name and address of the school they last attended, if any.
34. The [Education \(Pupil Registration\) \(England\) Regulations 2006](#) set out the grounds on which the name of a pupil shall be deleted from the admissions register. Where the exclusion is upheld by the independent appeal panel, the clerk should also advise the parent to contact the appropriate person at the home LA about arrangements for their child's continuing education. The headteacher/teacher in charge may legally remove the

pupil's name from the school/pupil referral unit roll the day after the conclusion of the appeal. If the parents decide not to go through the independent appeal panel, the pupil cannot be deleted from the school roll before the latest day for lodging an appeal.

35. The attendance register must be called at the beginning of each morning session and once during the afternoon session – and show whether each registered pupil at the school is present, absent, present at an approved educational activity or unable to attend due to exceptional circumstances as set out in the Regulations. The register must indicate: whether the absence of a pupil of compulsory school age is authorised; if a pupil is attending an approved, supervised, off-site educational activity, the nature of the activity; and when a pupil is unable to attend due to an exceptional circumstance, the nature of that circumstance.
36. Schools are required to use the national [Absence and Attendance Codes](#) to record in the attendance register the attendance of pupils whose names are on the admissions register. These codes help to ensure that schools comply with the requirements set out in paragraph 35, above. Attendance and absence data is collected via the School Census using these codes.
37. Registers are important documents and must be kept safe as they may be called in evidence in legal proceedings. They may be the only record of who was on site in the event of an emergency such as a fire.
- Handwritten registers must be kept in ink.
  - Alternatively, schools may use computers to keep either or both registers.

Whatever method is used, the register must clearly show the original entry and:

- any amendments
- the reason for the amendments
- who made the amendments
- when the amendment was made
- why it was made.

This helps to protect a school from false allegations that a register has been improperly altered.

38. Schools using computers for admission and attendance registers must make a back-up copy of the registers at least once a month in the form of an electronic, microfiche or printed copy.
39. Schools using computerised or manual registers:
- Schools must keep back-up copies of computerised registers or hard copies of manual registers (for both the admission and attendance registers) for at least three years from the date of each entry.
  - The governing body must make manual registers or, in the case of computerised registers, both the computerised register and additional back-up copies, available to school inspectors and anyone authorised by the LA.
  - Anyone authorised to inspect the registers may also take extracts, but these may only be taken for the purpose of their functions under the Education Acts and not therefore, in the case of LAs, for other LA purposes.

40. Governing bodies are no longer required to add their rates of absence in the school prospectus. They are automatically included in the School Profile based on the information that is included in the school and college achievement and attainment tables.

### **Leave of absence**

41. Governing bodies should authorise appropriate staff within the school to grant leave of absence to pupils and provide policies about allowing such leave. Leave cannot be granted for pupils to take up paid or unpaid employment except for public performances licensed by the LA or work abroad licensed by magistrates.

42. [The Education \(Pupil Registration\) \(England\) Regulations 2006](#) restrict leave of absence for family holidays to 10 school days a year in special circumstances and allow longer in exceptional circumstances. The decision rests with schools and families have no “right” to such leave and the application for leave must be made in advance by the parent the pupil normally resides with.

### Notifying the LA

43. LAs have a responsibility for legal sanctions to enforce school attendance. This duty is normally exercised through employees known as Education Welfare Officers who will work in a joint effort with families and schools to resolve any attendance issues. They do this by:
- helping schools to monitor and analyse attendance data;
  - helping schools to identify problems that are affecting the child’s attendance at school and agreeing plans for improving attendance with parents.
44. At agreed intervals, the governing body must give the LA the name and address of every pupil who does not go to school regularly and inform the LA if:
- a pupil has been continuously absent without authorisation for not less than 10 school days, specifying the cause if known;
  - a pupil has been permanently excluded;
  - a pupil is moving away from the area and is not known to have registered at another school;
  - a pupil has a custodial sentence of more than four months and has been taken off the roll;
  - any pupils of compulsory school age have been taken off the roll because the parents have informed the school in writing that the child will be taught at home.

### School attendance targets

45. [The Education \(School Attendance Targets\) \(England\) Regulations 2007](#) require governing bodies of all maintained schools to set overall absence targets, and for some governing bodies to set “focused absence targets” as required by the Secretary of State. The Regulations also place a responsibility on LAs to ensure that schools set the required targets within the time limits specified, and spell out what the LA can do if a school does not set a required target. LAs and schools may also wish to refer to the target-setting guidance produced for LAs.
46. Governing bodies and their clerks must ensure that the attendance target-setting procedures they adopt comply with the Regulations. This process will form part of the overall school target-setting exercise undertaken in conjunction with the school’s School Improvement Partner (SIP). Governing bodies need to ensure that their headteachers and SIPs are engaged and consulted in the target-setting processes. Guidance on the Regulations can be found on the DCSF [School Attendance website](#).

### School absence data

47. School governors are bound by the statutory requirement under [Section 538 Education Act 2006](#) which requires governing bodies to provide information requested by the Secretary of State for Children, Schools and Families. This includes absence data that will be collected every term through the School Census. For some secondary schools that have high absence or significant levels of persistent absence, data collection may take place every half term. LAs will let schools know if they are one of the priority schools that need to do this.

### Parenting contracts

48. The [Anti-social Behaviour Act 2003](#) allows schools and LAs to enter into contracts with parents where a pupil fails to attend school regularly, has misbehaved or is excluded. It is a matter for the LA or governing body of the school to consider whether it would be



appropriate to offer a parenting contract to the parent. A parenting contract is a formal voluntary written agreement between a parent and either the LA or the governing body of a school and should contain:

- a statement by the parents or guardians agreeing to comply for a specified period with whatever requirements are specified in the contract;
- a statement by the LA or governing body agreeing to provide support to the parents or guardians (tailored to their needs) for the purpose of complying with the contract.

49. Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract if he or she does not wish to do so. Nor is there any obligation on the LA or governing body to offer such a contract.

### Parenting orders

50. The Crime and Disorder Act 1998 allows the courts to impose a parenting order in any proceedings brought by the LA under Section 444 of the Education Act 1996 where a parent is successfully prosecuted for failing to secure their child's regular school attendance or where the child failed to attend alternative provision. Only LAs can prosecute parents under Section 444 of the Education Act 1996. Parenting orders are made at the discretion of the court where parenting is an issue.

51. The [Education and Inspections Act 2006](#) extended the provisions in Section 20 of the [Anti-social Behaviour Act 2003](#) to allow schools and LAs to apply for parenting orders where a pupil has seriously misbehaved (such as to warrant exclusion) or is excluded from school (whether for a fixed period or permanently).

52. The procedure for applying for parenting orders for behaviour requires either the LA or school to complete an application form and lodge this with the court in civil proceedings against the parent. In the case of attendance, the court will grant a parenting order where it considers this to be appropriate following successful prosecution of a parent by an LA for failing to secure their child's regular attendance.

53. In both cases an order will have two elements:

- a requirement on the parent to attend counselling or guidance sessions for a period of up to three months;
- any other requirement the court deems necessary, for example attendance at regular school meetings.

54. It is a matter for the court to grant an order. If granted the order will last for up to 12 months and any breach could result in the parent being fined in criminal proceedings.

55. Parenting contracts and parenting orders require the relevant body (i.e. the school or LA) entering into the contract or applying for the order to fund any cost of the "supportive" element of the contract or order. In the context of a school, this will be the governing body (which has control of the school budget under the [School Standards and Framework Act 1998](#)) and in this context it is:

- the governing body's name that must appear on the contract or order;
- the governing body that will have ultimate responsibility for monitoring the parenting contract or order.

56. The governing body may delegate responsibility for parenting contracts or orders to the headteacher. The headteacher may commit funds on behalf of the governing body where the governing body has chosen to delegate this power. However, the overall policy decision of whether parenting contracts or orders should form part of the school's attendance and behaviour policy must remain with the governing body.

Further information on parenting contracts is in the Guidance on Education-related parenting contracts, parenting orders and penalty notices at the [DCSF website](#).

### Penalty notices (for truancy and whereabouts of excluded pupils)

57. Schools and LAs can issue penalty notices to parents under [Section 444 of the Education Act 1996](#) where pupils fail to attend school regularly (truancy). Schools and LAs can also issue penalty notices in respect of excluded pupils under [Section 105](#) of the Education and Inspections Act 2006. The LA is responsible for administering the scheme and must set out in its local code of conduct the circumstances (including levels of unauthorised absence) in which a penalty notice may be issued. In setting these levels it should take into account the amount of unauthorised absence at which it is willing and able to prosecute for the offence of irregular attendance.
58. Schools and LAs can also issue penalty notices in respect of excluded pupils under [Section 105](#) of the Education and Inspections Act 2006. [Section 103](#) of the Education and Inspections Act 2006 places a duty on parents and carers to ensure that their excluded child is not found present in a public place during school hours without a reasonable justification during the five days of any exclusion. If found present, parents should be notified and a penalty notice issued. The LA local codes should detail what would be accepted as reasonable justification (for example, a medical appointment or being taken to an educational provision) to avoid a penalty being issued or the prosecution of a parent. The school must inform parents of excluded pupils of their duty under [Section 103](#) and that a penalty notice could be issued if their child is found present on the streets.

Payment of a penalty notice will discharge the parent's potential liability for the offence under [Section 444 of the Education Act 1996](#) or [Section 103 of the Education and Inspections Act 2006](#). If the LA does not have a published code in place then penalty notices cannot be issued to parents for either irregular school attendance or the presence of an excluded pupil in a public place.

### 59. Issuing penalty notices

Headteachers (and members of staff authorised by headteachers) are empowered to issue penalty notices and to authorise their deputy and assistant head to do the same in cases of irregular attendance under [Section 444](#) of the Education Act 1996 or the presence of excluded pupils in breach of [Section 103](#) of the Education and Inspections Act 2006, but in doing so, they must comply with the local code of conduct issued by their LA and provide a copy of any notice issued to the LA. Penalty notices can only be issued by the headteacher where the LA has consulted on and published a local code; if there is no local code in place the headteacher cannot issue them. All monies received by virtue of a penalty notice must be paid to the LA. Headteachers wishing to issue, or authorise their staff to issue, penalty notices must first gain the agreement of the governing body. The school's behaviour and attendance policies (where applicable) must be revised accordingly. Penalty notices can be withdrawn on very limited grounds detailed in the [Education \(Penalty Notice\) \(England\) Regulations 2007](#) SI 2007/1867. If a penalty remains unpaid after 42 days the school can ask the LA to prosecute the parent.

Further information on penalty notices is in the Guidance on Education-related parenting contracts, parenting orders and penalty notices at the [DCSF website](#).

### SCHOOL YEAR

60. Any maintained school in England must meet for 190 days in each year. Each day on which a school meets shall be divided into two sessions with a break in the middle of the day. This is set out in the [Education \(School Day and School Year\) \(England\) Regulations 1999](#).
61. Where a school is prevented from meeting it must make up lost sessions where that is reasonably practicable. Loss of sessions resulting from planned closures of a school due to building work or relocation does not constitute a school being "prevented" from meeting. If such projects risk a lack of access to the school premises for learning purposes, then governing bodies should do their best to ensure that alternative arrangements are made for the school to meet elsewhere or at another time in agreement with staff, pupils and parents.

### Length of the school day and term

62. Decisions on the dates for school term and holiday dates for community, voluntary controlled or community special schools are made by the LA and dates for foundation, voluntary aided or foundation special schools by the school governing body.
63. The governing body decides when sessions should begin and end on each school day. Sessions must allow enough lesson time to deliver a broad and balanced curriculum that includes the national curriculum and religious education. Schools are free to decide the length of each lesson but current recommendations per week are as follows:

Age	Suggested minimum weekly lesson time (hours)
5–7	21.0
8–11	23.5
12–13	24.0
14–16	25.0

64. For special schools the timings need to be more flexible. Schools need to allocate time for activities such as training in mobility, signing or the use of Braille and for any medical treatments required. They also need to take into account the length of time that pupils spend each day travelling to and from school. However, in general, special schools should regard the guidance in paragraph 63, above, as representing a level of provision to which they should aspire where practicable and where it is in the educational interests of the individual pupil. When determining hours of taught lessons, special schools should bear in mind the range and level of work being undertaken by pupils as well as their chronological age.
65. The recommended lesson hours do not include time for collective worship, registration or breaks. Enough time should be allowed for all these activities.
66. The headteacher must make information available to parents and others about the starting and finishing times of the school sessions.
67. The [Changing of School Session Times \(England\) Regulations 1999](#) apply to community, community special and voluntary controlled schools. They do not apply to voluntary aided, foundation and foundation special schools or maintained nursery schools. However, it is recommended that the governing bodies of such schools follow broadly the same procedures when considering changes.
68. The Regulations, as in paragraph 63, above, require that changes to the start or end of the school day may be introduced only at the beginning of a school year. If a governing body wants to make any changes to session times, it must first consult the LA, the headteacher and other school staff. After consultation the governing body must follow a process set out in Section 2 of the Regulations. This includes, among other things, making and distributing a statement, and holding a meeting with parents and other interested people. The governing body shall then give at least three months' notice (usually early June) to the LA and parents of any change to the start or end of the school day; and at least six weeks' notice of any other change.
69. An LA may charge a school for the extra transport or other costs resulting from a governing body's decision to change their school day.

### Attendance outside school premises

70. The governing body can make pupils attend instruction and training outside school premises for purposes other than religious education or collective worship.
71. From September 2009, governing bodies will also have the power to require pupils to attend provision outside school premises for the purposes of improving their behaviour.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 1996: Sections 494 and 548 (as amended by the School Standards and Framework Act 1998)

The Education Act 1996: Sections 444, 444A, 444B and 444ZA (dealing with penalty notices and failure to secure attendance)

The School Standards and Framework Act 1998: Sections 61, 63 and 138

The Education Act 2002: Sections 29, 29A, 32 and 52

The Anti-social Behaviour Act 2003: Sections 19 and 20 (parenting contracts and orders)

The Education Act 2005

The Education (School Hours and Policies) (Information) Regulations 1989: SI 1989/398

The Education (Pupil Registration) (England) Regulations 2006: SI 2006 No. 1751

The Education (School Performance Information) (England) Regulations 2001: SI 2001/3446

The Education (School Attendance Targets) (England) Regulations 2007: SI 2007/2261

The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007: SI 2007/1869

The Education (Penalty Notices) (England) Regulations 2007: SI 2007/1867; the Education and Inspections Act 2006: Sections 98 and 103

The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999: SI 1999/495 (as amended by the Education (Amount to Follow Permanently Excluded Pupil) (Amendment) (England) Regulations 2001: SI 2001/870 and the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004: SI 2004/0402); The Education (School Information) (England) Regulations 2002: SI 2002/2897

The Changing of School Session Times (England) Regulations 1999: SI 1999/2733

The Education (Pupil Information) (England) Regulations 2000: SI 2000/297

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002: SI 2002/3178

The Local Education Authority (Behaviour Support Plans) Regulations 1998

The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004: SI 2004/0402

The Education (Pupil Exclusions and Appeals) (Miscellaneous Amendments) (England) Regulations 2006: SI 2006/2189

The School Finance (England) Regulations 2008: SI 2008/228

The Education (Pupil Exclusions and Appeals) (Pupils Referral Units) (England) Regulations 2008 SI 2008/532

## GUIDANCE

DES Administrative Memorandum 1/88

DES Circular 7/90: Management of the School Day

[DFE Circular 17/94: Money following the Permanently Excluded Pupil](#)

[DfEE Circular 2/96: Reports on Pupils' Achievements in Primary Schools](#)

[DfEE Circular 3/96: Reports on Pupils' Achievements in Secondary Schools](#)

[DfEE Circular 11/96: School Prospectuses and Governors' Annual Reports in Primary Schools in 1995/96 \(and additional guidance booklet\)](#)

[DfEE Circular 12/96: School Prospectuses and Governors' Annual Reports in Secondary Schools in 1995/96 \(and additional guidance booklet\)](#)

[DfEE Circular 11/97: School Leaving Date for 16-Year-Olds](#)

[DfEE Circular 1/98: LEA Behaviour Support Plans](#)

[Managing Behaviour and Attendance](#) – web-based guidance for LAs and schools on behaviour and attendance

[Keeping Pupil Registers](#) – Guidance on applying the Education Pupil Registration Regulations

[Absence and Attendance Codes Guidance for Schools and Local Authorities](#)

[Guidance on the Education \(School Attendance Targets\) \(England\) Regulations, September 2007](#)

[Effective Attendance Practice in Schools – An Overview](#)

[Effective Attendance Practice in Schools – Advice for Governors](#)

[Ensuring Children's Right to Education: Guidance on the Legal Measures available to Secure Regular School Attendance](#)

[The Education \(Pupil Exclusions and Appeals\) \(Pupil Referral Units\) \(England\) Regulations 2008](#)

[Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices](#)

[Parenting Contracts: A Guide for Parents](#)

[Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units, September 2006 \(Ref:00611-2007BKT-EN\)](#)

[Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units, September 2008](#)

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# 14 INSPECTION

## CHAPTER SUMMARY

This chapter explains the aims of the school inspection process, the circumstances in which a school may be inspected and the procedures which the headteacher and governing body are expected to follow prior to and following an inspection.

VA  
VC  
F The governing bodies of voluntary aided, voluntary controlled and foundation schools designated as having a religious character must arrange a separate inspection of collective worship and any denominational education.

## BACKGROUND

1. Inspection is intended to help schools to improve by highlighting their strengths and weaknesses, providing them with recommendations for improvement and promoting a culture of rigorous self-evaluation. The publication of inspection reports also provides information to parents and the wider community about the quality of education and whether pupils are achieving as much as they can.
2. All maintained schools are subject to regular inspections by Ofsted approximately every three school years (Section 5 inspections). The frequency of inspections within that period depends on the circumstances of individual schools, with the most effective schools generally having the longest interval between inspections. The scope of Section 5 inspections is defined by statute and is set out in more detail in *Every Child Matters: Framework for the Inspection of Schools in England from September 2005*, which is published by Ofsted.
3. In addition to the regular programme of Section 5 inspections, Ofsted inspects schools for a variety of reasons, such as:
  - to gather evidence for reports and advice on curriculum subjects;
  - to assess specific themes and initiatives, for example, literacy and numeracy in primary schools;
  - to monitor improvement in schools causing concern.

Inspectors have a right of entry to schools and a right to access information held by schools to undertake this work.

4. Ofsted is a non-ministerial government department headed by Her Majesty's Chief Inspector of Education, Children's Services and Skills (the Chief Inspector). The Chief Inspector is responsible for ensuring that the programme of school inspections is carried out. He or she uses Her Majesty's Inspectors (HMIs) and Additional Inspectors (AIs) to carry out these inspections. Most AIs are employed by, or work under contract to, external contractors (inspection service providers).
5. The Chief Inspector is required to publish details of the qualifications or experience required of AIs, the standards that they are required to meet and the skills they must demonstrate in carrying out inspections. The contracts that the Chief Inspector enters into with inspection service providers require that they ensure that AIs meet those published requirements. The Chief Inspector publishes, at intervals of not more than 12 months, the names of inspectors given to him or her by the inspection service providers that they intend to use.
6. HMIs quality assure inspections in addition to the inspection providers' own quality assurance arrangements to ensure that they meet the Chief Inspector's requirements. All AIs must carry out an inspection to the satisfaction of HMIs before they can participate in a Section 5 inspection without the supervision of HMIs.

## BEFORE AN INSPECTION

7. There is no statutory requirement for advance notification of an inspection. However, most

schools will receive two days' notice. The headteacher will be contacted by the inspection service provider and informed that the inspection will be taking place. The headteacher is expected to pass this information on to the governing body. The lead inspector will then contact the headteacher or next most senior staff member to discuss the inspection arrangements. Following that, the lead inspector will prepare a pre-inspection briefing, which sets out preliminary observation and areas to explore. This will be sent to the school before the inspection.

8. Where Ofsted considers it appropriate, inspections may be conducted without notice. This may happen where, for example, there are concerns about the safety or well-being of pupils at the school.
9. Inspectors should not have any connection with the school, its staff or governors which might reasonably raise doubts about their ability to act impartially in relation to the school. Any concerns about this should be raised immediately with the lead inspector or inspection provider.
10. Where notice of a Section 5 inspection is given, the governing body must take reasonable steps to notify:
  - registered parents of registered pupils at the school regarding the time of the inspection and invite parents to inform inspectors of their views about the school (Ofsted will provide a standard letter in a range of community languages for this purpose);
  - the Local Authority (LA);
  - whoever appoints the foundation governors in voluntary schools, and for voluntary aided schools, the diocesan authority (if different);
  - any appropriate officer of the LA where a registered pupil is looked after by the LA;
  - the local Learning and Skills Council (LSC) for secondary schools.
11. The lead inspector is likely to ask for a room to be made available during the inspection where the inspection team can meet in private, but if that would cause undue disruption to pupils and/or staff, the lead inspector must make other arrangements.
12. Inspectors will have had access already to a copy of the school's Self-Evaluation Form (SEF), school performance data (RAISEonline) and the report from the previous inspection. At the start of the inspection the school may be asked to provide one copy of each of the following documents (where these are not available on the school's website):
  - the current improvement or management plan
  - the school's timetable
  - a plan of the school.

Schools should neither arrange lessons or other activities specifically for the inspection nor cancel or reschedule any activities because of the inspection, and inspectors cannot require them to do so.

### **DURING AN INSPECTION**

13. The time an inspection takes depends on the size and nature of the school, but inspections will not last longer than two days. In some schools, where Ofsted considers achievement to be high, where self-evaluation is good and there is a good track record from the schools' previous inspection, the school may be subject to a "reduced tariff" inspection. This may involve a smaller inspection team and shorter duration.
14. The governing body and staff of the school must give the inspectors access to relevant documents and records (including those on computers) and access to lessons and school activities. The focus of the inspection will be on the school's core systems and key outcomes, informed by self-evaluation evidence and first-hand observation, discussion and analysis.



Inspectors must be allowed to talk to individuals and groups of staff, pupils and governors who are available during the inspection, to enable them to carry out the inspection effectively. Deliberately obstructing a member of the inspection team is an offence.

15. Inspectors are required specifically to have regard to any views expressed to them by governors, the headteacher, staff, pupils, parents and others that are notified of the inspection.
16. Inspectors should offer oral feedback to teachers and other staff about the work they see. They should also provide feedback to the headteacher on their findings at regular intervals throughout the inspection. Shortly after the inspection finishes, the senior management team (and, where possible, a representative from the governing body) should be given oral feedback. The feedback session should provide a firm basis for staff and governors to begin to prioritise and integrate key areas for action within the school's existing improvement/management plan. The feedback should be regarded as confidential and the inspectors' findings should not be released to parents or others until the report is available.
17. HMIs may visit the school during an inspection for the purposes of quality assurance.

### **THE INSPECTION REPORT**

18. Inspection reports will normally be sent to the school within two weeks of the end of the inspection. The school will be shown the report in draft form and have an opportunity to comment on it. Ofsted must ensure that a copy of the final report is sent to:
  - the governing body;
  - the headteacher;
  - the LA;
  - those who appoint the foundation governors and the appropriate appointing authority, if different; and
  - the LSC, if the school has a sixth form.
19. The main findings of the report will reflect the inspection team's judgements on:
  - the quality of education;
  - how the needs of the range of pupils are met;
  - the educational standards;
  - the leadership and management, including management of financial resources;
  - the spiritual, moral, social and cultural development of pupils;
  - the school's contribution to the well-being of its pupils;
  - the school's contribution to community cohesion.
20. When it receives the report, the governing body must arrange for:
  - the parents of all pupils to be sent a copy of it within five working days;
  - the report to be made available to any member of the public who wishes to see it, at such times and place as may be reasonable;
  - copies of the report to be provided to anyone who asks (charges may be made, provided that these are not greater than the cost of copying).
21. Governing bodies may wish to consider placing copies of the report on the school's website and in local public libraries, and sending the report to local newspapers and radio stations. Each school's inspection report is available on Ofsted's website at [www.ofsted.gov.uk](http://www.ofsted.gov.uk)
22. The governing body should also consider translating the report into other languages where appropriate.

### **ABOUT SCHOOLS CAUSING CONCERN**

23. At the end of an inspection, inspectors must consider whether a school falls into one of the "schools causing concern" categories: special measures or significant improvement

(“notice to improve”). Guidance on all categories of schools causing concern and the powers available to LAs and others to challenge and support these schools is given in chapter 15 of this Guide, Schools causing concern.

### INSPECTING RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP

24. The governing body of a voluntary or foundation school which has been designated by the Secretary of State for Children, Schools and Families as having a religious character is responsible for making sure that the content of the school’s act of collective worship, and any denominational religious education provided for pupils, is inspected every three years (Section 48 inspection). These aspects of the school’s provision will not be included in the Section 5 inspection arranged by Ofsted. The governing body may arrange for the Section 48 inspection also to cover the spiritual, moral, social and cultural development of pupils at the school.
25. The contractual arrangements, including fees, are a matter for the governing body. When choosing an inspector for the Section 48 inspection, the governing body (or in the case of a voluntary controlled school, the foundation governors) must consult one of the following bodies shown in the table below.

#### School designation

Church of England or Roman Catholic  
 Jewish  
 Methodist  
 Muslim  
 Sikh  
 Seventh-Day Adventist

#### Consultation body

The appropriate diocesan authority  
 Jewish Studies Education Inspection Service  
 Education Secretary to the Methodist Church  
 Association of Muslim Schools  
 Network of Sikh Organisations  
 Education Department of the British Union  
 Conference of the Seventh-Day Adventists

26. It is recommended that governing bodies arrange for the Section 48 inspection and the Section 5 inspection to take place concurrently, or as close as practicable to each other. The Section 48 inspection should not normally take place later than the end of the term following that within which a Section 5 inspection takes place. Ofsted has agreed protocols with a number of faith-group representatives to facilitate this.
27. A grant is available towards the cost of the Section 48 inspection. For Church of England, Jewish, Methodist, Muslim, Roman Catholic, Sikh and Seventh-Day Adventist schools, the process for claiming the grant is managed by the individual faith groups. For other schools, the grant is available through the DCSF Inspections Unit (claims are made using grant form DRE1, which can be obtained from the [TeacherNet](#) website or by contacting the DCSF Inspections Unit, tel: 0870 00 12345).
28. An inspection report must be prepared within 15 working days of the end of the inspection. The governing body must publish this in the same way as for Section 5 inspections, which includes sending a copy of the report to the parents of all registered pupils.

### COMPLAINTS BY PARENTS ABOUT SCHOOLS

29. Ofsted has powers to investigate certain complaints by parents about their child’s school for the purpose of deciding whether to use its inspection powers. It has powers to obtain information to facilitate an investigation.
30. If requested to do so, the governing body must provide Ofsted with any information held by it which Ofsted specifies and any other information that the school considers to be relevant to the investigation of a complaint.
31. Should Ofsted consider it appropriate for the purpose of an investigation that Ofsted meets with parents, the governing body (or in the case of a school which does not have a delegated budget, the LA) must co-operate with Ofsted in arranging the meeting,

including allowing a meeting to take place on the school premises, fixing a date for the meeting and notifying parents and the LA of the meeting. A representative of the governing body and the LA may also attend the meeting.

32. If Ofsted prepares a report of an investigation, that report must be passed to the governing body (or in the case of a school which does not have a delegated budget, the LA). The body must then send a copy of the Ofsted report to all registered parents.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website: [www.governor.net.co.uk](http://www.governor.net.co.uk)**

[The Education and Inspection Act 2006](#)

[The Education Act 2005](#)

[The Education Act 2002](#)

[The School Standards and Framework Act 1998](#)

[The Education \(School Inspection\) \(England\) Regulations 2005: SI 2005/2038.](#)

[The Education \(Investigation of Parents' Complaints\) \(England\) Regulations 2007: SI 2007/1089](#)

[The Education \(School Inspection etc.\) \(England\) \(Amendment\) Regulations 2008: SI 2008/1723](#)

## GUIDANCE

Ofsted publications include:

[Every Child Matters: Framework for the Inspection of Schools in England from September 2005, September 2008 edition \(website only – ref 070186\)](#)

[Conducting the Inspection: Guidance for Inspectors of Schools, published September 2008 \(website only – ref 070187\)](#)

[Using the Evaluation Schedule: Guidance for Inspectors of Schools, published September 2008 \(website only – ref 070188\)](#)

[Complaints procedure: Raising concerns and making complaints about Ofsted, published December 2008 \(website only – ref 070080\)](#)

[Complaints to Ofsted about schools: Guidance for parents, published July 2008 \(Ref 080113\)](#) Priced Ofsted publications are available from The Stationery Office (tel: 0870 600 5522)

Other Ofsted publications are available from Ofsted's publications centre (tel: 0702 637833 or email: [freepublications@ofsted.gov.uk](mailto:freepublications@ofsted.gov.uk))

All Ofsted publications can be accessed from its website: [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

14. INSPECTION

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# 15 SCHOOLS CAUSING CONCERN

## CHAPTER SUMMARY

This chapter relates to schools causing concern and the actions which may be taken against such schools. It also explains how measures to improve these schools are implemented. “Schools causing concern” refers to schools which are judged to be “eligible for intervention”. These are maintained schools that require special measures or significant improvement (also known as “notice to improve”) by Ofsted, or which have not complied with a valid Local Authority (LA) warning notice.

The provisions relating to schools causing concern are set out in detail in the [Department for Children, Schools and Families \(DCSF\) Statutory Guidance on Schools Causing Concern 2008](#). LAs must have regard to this guidance.

## WARNING NOTICES

1. Changes to the legislative provisions have been made in [Part 4 of the Education and Inspections Act 2006](#). The legislation is designed to promote school self-evaluation as a route to school improvement and early intervention where schools need additional support. School Improvement Partners (SIPs) have been deployed to all maintained schools (see chapter 11, The new relationship with schools) and will support self-evaluation, planning and effective change and performance management. Their reports will be part of the intelligence that LAs are expected to draw upon to keep abreast of any problems arising. They will also help LAs to develop appropriate strategies to monitor and support schools causing concern in inverse proportion to a school’s capacity to improve.
2. LAs should always try to work constructively with schools causing concern, but where there is a refusal by the school to work with them and the SIP, the LA may issue a warning notice. Under the legislation ([Education and Inspections Act 2006](#)) a warning notice may be issued if the LA has sufficient evidence that:
  - the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercises its powers;
  - there has been a serious breakdown in the way that the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance;
  - the safety of pupils or staff at the school is threatened (by a breakdown of discipline or otherwise).
3. The way in which unacceptably low standards of performance (the first criterion above) are defined has changed from prior legislation. Previously it referred to absolute low standards (i.e. performance in external examinations below national floor targets). The current legislation still refers to absolute low performance, but also refers to relatively low performance. Relatively low performance includes, for example, performance that is low by comparison with the pupils’ past attainment, or with the standards attained by similar pupils at comparable schools, even if the school’s absolute performance figures appear acceptable.
4. The [Statutory Guidance on Schools Causing Concern](#) sets out in greater detail examples of the circumstances in which a warning notice may or may not be given and the forms of evidence which should be present to justify the giving of such a notice (see the section on warning notices in chapter 2 of the Guidance).
5. A warning notice is a written notice sent from an LA to a governing body. It must set out the reasons for issuing the notice, including the evidence on which the LA has based these conclusions. The notice must explain what action the governing body is required to take within the 15-day compliance period, and set out how the LA intends to respond if

the governing body does not comply with this action. It must also inform the governing body that it may make representations to Ofsted against the warning notice. The grounds for doing so may include that the grounds for the Warning Notice are not valid or the action proposed is disproportionate. The governing body has 15 working days following the day that the warning notice is issued to comply with the notice or appeal to Ofsted.

6. If representations are made, Ofsted have advised that they should be sent to one of the three Regional Divisional Managers at Ofsted (Southern, Midlands or Northern depending where your school is) or by email to [warningnotices@ofsted.gov.uk](mailto:warningnotices@ofsted.gov.uk), and should explain the reasons for the representations including, where relevant, why the governors disagree with the grounds for issuing the warning notice, or why they consider the action proposed to be disproportionate. Ofsted may make its decision about whether to uphold the warning notice based on written evidence alone. It may request additional evidence from either the school or the LA in order to arrive at a judgement. If there is insufficient evidence to reach a decision, Ofsted may inspect the school.
7. If Ofsted does not confirm the warning notice it will be withdrawn. If Ofsted confirms the warning notice, the governing body will receive notice in writing of this and will have 15 working days from that day to comply with the warning notice or the school will be eligible for intervention.
8. If a governing body does not make representations or if the warning notice is confirmed, the governing body must comply with the warning notice to the Authority's satisfaction. This may not mean fully rectifying a problem, since it will not always be possible to do so within 15 days, but it will involve taking positive steps towards a solution. If the LA is content with the action taken, the warning notice should be rescinded.
9. If, following the 15-day period, the LA is not content and has indicated in the warning notice that it intends to use intervention powers (set out in paragraphs 21–31), it may use these powers. It must give a reasonable period of notice (this may be as little as one day where urgent action is required) and use its powers within two months of the notice.

### **SPECIAL MEASURES AND SIGNIFICANT IMPROVEMENT**

10. If a school is found to be inadequate (inspection Grade 4) when it is inspected, Ofsted will decide whether the school requires significant improvement or special measures.
  - A school requires special measures where it is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school.
  - A school requires significant improvement where it does not require special measures but nevertheless is performing significantly less well than might reasonably be expected. Schools may require significant improvement in relation to their main school or their sixth form, while other parts of the school may be performing satisfactorily. Requiring significant improvement is also sometimes referred to as having a notice to improve.

### **Entering the category**

11. After all inspections, the inspection team will meet with the headteacher and governing body to give them feedback. If the inspection team thinks that the school requires special measures or significant improvement, it will say so at the feedback meeting.
12. All inspection judgements that a school requires special measures or significant improvement are subject to moderation by an Ofsted Regional Assistant Divisional Manager (ADM). Those identified as requiring special measures are subsequently approved personally by the Chief Inspector (HMCI) or a specially authorised inspector (HMI). When a draft report of an inspection identifies the need for either of these, the governing body will be given five working days to comment on this draft before the report is finalised. The final report will be made available to the public on Ofsted's website a minimum of five working days after it is sent to the governors.

### Action required

13. The school is expected to update its development plan (or school improvement plan) to respond to the issues highlighted by the inspection. There are no legal requirements for this or for supplying the plan to Ofsted, but the school will be expected to share the latest version of its plan with inspectors when they are monitoring.
14. The LA must prepare a separate statement of action within 10 working days of receiving the final Ofsted report. It should work with the school's governors, headteacher and SIP to prepare the statement (for a full description of what needs to be included in the statement of action, see the *Statutory Guidance on Schools Causing Concern*). The LA must send a copy of the final statement of action to the governing body, Ofsted and other parties. Ofsted will provide feedback on the quality of the statement of action in writing (usually on the report of the first monitoring visit).
15. [Section 15 of the Education Act 2005](#) requires LAs to inform parents and carers about the actions planned for the school and how their views will be taken into account. The statutory guidance suggests that one of the ways this can be done is with the appointment of a Parent Champion to the school. The guidance sets out the role of Parent Champions, which includes influencing decisions about the future of the school on behalf of parents, particularly when a radical change is being considered.

### Monitoring visits and further inspections

16. Schools requiring special measures or significant improvement will receive monitoring visits on a termly basis. On monitoring visits, HMIs will assess progress and judge whether or not the school should be removed from special measures. Schools should keep parents informed of the progress being made. Monitoring visit reports are published on Ofsted's website.
17. Current Ofsted procedures are as follows.
  - A school requiring significant improvement will be visited, usually for one day by one inspector, six to eight months after it was originally inspected.
  - A school requiring special measures will be visited for up to two days by an inspection team four to six months after it was originally inspected. It will continue to receive monitoring visits for as long as it remains in the category.
18. A school requiring significant improvement will receive a further full inspection approximately 12 months after the original inspection. If it remains inadequate, it may be made subject to special measures or be judged to require significant improvement again.
19. If a school remains in special measures after two years it will receive a further full inspection. Ofsted will decide whether to remove the special measures designation, renew it, or judge that the school requires significant improvement.

### “The case has become urgent”

20. The statutory guidance advises that if a school in special measures is failing to make progress, the Secretary of State may write to the LA to declare that the case has become urgent. The usual trigger for this will be if the school is found to be making inadequate progress at its second monitoring visit, although this will not always be the case. The LA must respond to this letter by reviewing the actions taken so far, considering more radical solutions to improve the school, and producing a revised statement of action within 10 working days. This statement of action will be copied to the governing body. Unless the statement of action makes a very good argument that the new plans will secure rapid improvements at the school, the Secretary of State may presume that the school should be closed.

### INTERVENTION POWERS

21. LAs and the Secretary of State for Children, Schools and Families have intervention powers to tackle the problems of schools requiring special measures or significant

improvement. LAs may also use intervention powers at schools which have not complied with a valid warning notice.

22. LAs may require a school which is eligible for intervention (because it is in special measures or requires significant improvement, or has failed to comply with a warning notice), to:
- enter into a partnership arrangement with another school, an organisation or an individual;
  - add additional governors to the governing body;
  - return its delegated budget;
  - apply to the Secretary of State for Children, Schools and Families to replace its governing body with an Interim Executive Board (IEB);
  - publish proposals for closure.

These measures are explained more fully in paragraphs 23–26 below.

### Partnership arrangements

23. LAs can require a school to enter into collaborative arrangements to secure improvements. This collaboration may be with:

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- the governing body of another school;
- a further or higher education body;
- another organisation (including non-educational organisations);
- a specified individual; or
- may involve steps to create or join a federation.

The LA must consult the school governing body and the diocese or other appointing authority for foundation or voluntary schools.

### Additional governors

24. The LA has powers to appoint as many additional governors as it sees fit. The LA must consult the diocese or other appointing authority for foundation or voluntary schools, which may also appoint additional governors.

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### Interim Executive Boards

25. The LA has a power to provide for the governing body to be replaced by an IEB, with the consent of the Secretary of State for Children, Schools and Families (for more details see paragraphs 32–51, below).

### Suspension of delegation of the school budget

26. The LA has the power to suspend the governing body's right to a delegated budget, after giving the governing body and the headteacher notice in writing.

### Intervention powers of the Secretary of State and others

27. The Secretary of State for Children, Schools and Families has powers to appoint additional governors to a school requiring special measures or significant improvement at any time, and may nominate one of those governors to be the chair of the governing body in place of any person who was the chair previously. If he or she appoints additional governors, the LA may not also appoint additional governors or take back a delegated budget. If a delegated budget has already been suspended, the governing body may ask the Secretary of State for Children, Schools and Families to have this reinstated.
28. The Secretary of State for Children, Schools and Families may replace the governing body of a school with an IEB where the LA appears unwilling to do so. (Further advice on IEBs is given in the next section of this chapter.)



29. There are powers for the Secretary of State to require an LA to take an external partner for advice, where it appears that the LA is unlikely to be able to remedy deficiencies in a school, or has a disproportionate number of schools in special measures or in need of significant improvement.
30. The Secretary of State may also give a direction to the LA that a school requiring special measures should be closed on a given date. He or she may consider using this power if it is unlikely that the LA will ensure rapid improvement and is unwilling to consider closure of the school.
31. Diocesan or other appropriate appointing bodies have powers to add additional governors at voluntary aided schools if the LA has also done so, where a school has been judged to require significant improvement or has not complied with a formal warning. The number of new foundation governors may be equal to the number added by the LA. If a school has been placed in special measures, the appropriate authority may appoint as many additional governors as it thinks fit, whether or not the LA has done so.

### **INTERIM EXECUTIVE BOARDS (IEBs)**

32. An IEB is a governing body appointed for a temporary period in exceptional circumstances with the specific task of ensuring school improvement. There are also Regulations covering the transition back to normal governance with a Shadow Governing Body (SGB). The principal duties of an IEB are to:
  - take on all the responsibilities of a governing body;
  - conduct the school so as to secure a sound basis for improvement;
  - promote high standards of education.

The principal duties of an SGB are to:

- work alongside an IEB before taking over responsibility as a governing body;
  - act alone as a governing body until the date of constitution of a new normally constituted governing body;
  - be constituted as indicated in the Regulations;
  - follow procedures set out in the Regulations in relation to the election of the chair and vice-chair appointments and function of the clerk, and to proceedings and meeting papers.
33. The [Education and Inspections Act 2006](#) gives powers to both the LA (with the Secretary of State's consent) and the Secretary of State for Children, Schools and Families, enabling them to replace the governing body of a school causing concern with an IEB where the governing body is proving an obstacle to progress.

### **Local Authority powers**

34. [Section 65 of the 2006 Act](#) gives LAs the power to appoint a specially constituted governing body of interim executive members to replace a normally constituted governing body for a temporary period. The power to replace the governing body of a school with an IEB is available when a school:
  - is in special measures;
  - has been judged to require significant improvement;
  - has failed to comply with a warning notice from its LA.
35. The power is intended to be used only in exceptional circumstances and may be used only with the consent of the Secretary of State for Children, Schools and Families. An application will set out the reasons for suggesting an IEB and give details of any steps that the LA has taken to improve the school, and of the proposed members and the skills and experience they will bring. An LA should have evidence that a governing body is obstructing rather than enabling progress to be made in improving a school.
36. Before using the power, the LA must consult the school governing body, and in the case

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of a foundation or voluntary school, the diocesan authority or any other body which appoints foundation governors. The normally constituted governing body must be given written notice that an LA proposes to establish an IEB. An LA must give written notice to the governing body stating the date on which it is to be replaced by an IEB.

### Secretary of State's powers

37. [Section 69 of the 2006 Act](#) gives the Secretary of State for Children, Schools and Families powers to replace a governing body with an IEB where the LA has not already done so in respect of schools requiring special measures or significant improvement. Before exercising this power, the Secretary of State must consult the LA, the governing body that is to be replaced and the body responsible for appointing any foundation governors, unless that consultation has already been carried out by the LA in connection with a proposal of its own to appoint interim executive members.

### IEB provisions

38. IEBs have almost always been appointed by LAs. [Schedule 6 of the 2006 Act](#) contains detailed provisions relating to IEBs. An IEB should be a small, focused group with at least two members appointed for the full period which it is expected to take to turn the school around. Members of an IEB should be chosen on an individual basis, although existing governors can be appointed to an IEB. The period of time can be specified in the initial notice of establishment. The IEB will take on all the responsibilities of a governing body with regard to the conduct of the school, including:
- management of the budget;
  - the curriculum;
  - staffing;
  - pay and performance management; and
  - the appointment of the headteacher and deputy headteacher.
39. The initial appointment should commence on the date specified in the notice. Once established, further interim executive members can be appointed at any time. Interim executive members hold office in accordance with their terms of appointment and can be removed for incapacity or misbehaviour. Copies of the notice appointing a member should be given to each member, existing governors, the LA or Secretary of State for Children, Schools and Families (whichever is appropriate), and the relevant diocesan authority or any person(s) appointing foundation governors.
40. LAs or the Secretary of State may choose to pay interim executive members whatever amount the LA or DCSF decides, and may also nominate a member to be chair of the IEB.
41. The IEB is the governing body of the school for the time that it is in office. It has a duty to conduct the school to secure, as far as possible, a sound basis for future improvement in the conduct of the school. It should also promote high standards of educational achievement and put appropriate targets in place. The IEB may determine its own procedure to carry out the duties of a governing body and make such arrangements as it wishes for its functions to be carried out by any other person.
42. The IEB has a right to a delegated budget. If the school's budget has been withdrawn under [Section 66 of the Education and Inspections Act 2006](#), then the LA must restore the budget from the date when the IEB commences its work. If a notice has been given to the normally constituted governing body under [Schedule 13 to the School Standards and Framework Act 1998](#), specifying a date when it is proposed to withdraw the right to a delegated budget for financial mismanagement or any other reason, the notice will cease to have effect from the date of commencement of the IEB.

### School closure

43. The IEB may recommend to the LA or to the Secretary of State for Children, Schools and Families that the school should be closed under the normal statutory procedures.

However, it cannot itself publish proposals for closure. If closure proposals are agreed and the LA or Secretary of State for Children, Schools and Families does decide to close the school, the IEB must continue to hold office until the implementation date of the proposals when the LA ceases to maintain the school.

**TRANSITION: SHADOW GOVERNING BODIES (SGBs) AND RESUMPTION OF AUTHORITY BY A NORMALLY CONSTITUTED GOVERNING BODY**

- 44. The School Governance (Transition from an Interim Executive Board) Regulations 2004 cover the transition to normal school governance arrangements after a date has been set for the completion of the work of the IEB. The Regulations provide for an SGB to work alongside the IEB for at least six months before taking over full responsibility as the governing body, until a normally constituted governing body is established under an instrument of government. The SGB will be expected to act alone as the governing body of the school for up to 13 months after the IEB has been disbanded.

**Cessation of the IEB**

- 45. If the final date for the IEB to cease work was not given in the first notice of appointment, the LA (or the Secretary of State for Children, Schools and Families, where he or she has appointed the IEB) must specify a date when a normally constituted governing body will return by giving notice. This notice should be sent to all those (listed above) who were given a copy of the first notice.

**Shadow Governing Bodies**

- 46. SGBs consist of between 9 and 20 members made up of shadow parent, staff, LA and community governors and shadow foundation governors for foundation and voluntary schools. They are appointed by the LA in all categories of school, and it will be for the LA to decide the size of the SGB. In appointing shadow foundation governors, the LA must consult those people who would be entitled to make such appointments if the governing body were a normally constituted governing body. An interim executive member can also be a shadow governor.

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School	Parent *	Staff**	LA	Community	Foundation
Community, community special, maintained nursery school	One-third or more	At least two but not more than one-third	One-fifth	One-fifth	
Foundation, foundation special	One-third or more	At least two but not more than one-third	At least one but not more than one-fifth	One-tenth or more	At least two but not more than one-quarter
Voluntary aided	At least one	At least two but not more than one-third	At least one but not more than one-tenth		More than the number of shadow governors in other categories
Voluntary controlled	One-third or more	At least two but not more than one-third	At least one but not more than one-fifth	One-tenth or more	At least two but not more than one-quarter

- 47. The number and proportion of each category of governor for each category of school is set out in the Regulations.

\*Shadow parent governors must be parents of a child under, or of, compulsory school age; the child need not attend that particular school, but the parent of a child attending the school would be preferable, if at all possible.

\*\*Shadow staff governors must be paid to work at a maintained school. Wherever possible, LAs should appoint a person paid to work at the school in question as a shadow staff governor of that school.

48. The Regulations also specify the procedures to be followed in relation to the election of the chair and vice-chair, the appointment and functions of the clerk, and to the proceedings and meeting papers of the SGB. In all other respects, the SGB should establish its own procedures.

### **Resumption by a normally constituted governing body**

49. At the end of the interim period specified in the notice of appointment, the IEB will cease to exist. In accordance with [Paragraph 18 of Schedule 6 to the Education and Inspections Act 2006](#), the SGB will be the governing body of the school as if it were a normally constituted governing body.
50. The LA must set a date on which the shadow governors will vacate office and the governing body will be constituted as a normally constituted governing body. This date is called the constitution date, and it must be set at a date no later than 13 months after the IEB ceases to exist. The LA must give one term's notice of the constitution date and will need to ensure that it secures the appointments or elections of governors as required by the instrument of government. LAs should be aware that any amendments that need to be made to the school's instrument of government must be made at an appropriate stage to enable the normally constituted governing body to be constituted as intended.
51. The LA and the SGB may wish to review the school's instrument of government prior to the constitution date to ensure that the size and membership of the normally constituted governing body will be appropriate. Section 5 of the [Statutory Guidance on the Constitution Regulations](#) requires the governing body to draft the instrument and submit it to the LA. In keeping with this, LAs should expect the SGB, acting as the normally constituted governing body, to prepare the first draft of any new instrument for its approval.

## **THE LAW**

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 2005: Sections [13](#), [15](#), [44–46](#)

The Education and Inspections Act 2006: [Sections 59–73](#), [Schedules 6 and 7](#)

The School Governance (Transition from an Interim Executive Board) (England) Regulations 2004: [SI 2004/530](#)

## **GUIDANCE**

DCSF publications:

[Statutory Guidance on Schools Causing Concern](#), September 2008

# 16 HEALTH, SAFETY AND WELFARE

## CHAPTER SUMMARY

This chapter explains health and safety responsibilities in schools, which are governed by legislation enforced by the Health and Safety Executive (HSE).

### PUPIL HEALTH AND SAFETY

1. Health and safety responsibilities derive from the [Health and Safety at Work, etc. Act 1974](#) and the associated [Management of Health and Safety at Work Regulations 1999](#). Pupils are protected by the duties imposed because they are affected by an employer's undertaking or are using school premises. The legislation requires employers to assess and manage risk and is usually enforced by the HSE in respect of schools.

#### Who is responsible for pupil health and safety?

2. Responsibility for the health and safety of pupils lies with the governing body of the school, either as the employer of school staff or because it controls school premises (or both). Where the governing body does not employ school staff, the Local Authority (LA) has responsibilities as the employer.

#### Employers

3. Who the employer is varies with the type of school. The employer is:
  - the LA in community schools, special schools, voluntary controlled schools, maintained nursery schools and pupil referral units;
  - the governing body in foundation schools, foundation special schools and voluntary aided schools.
4. The employer must ensure, as far as is reasonably practicable, that pupils are not exposed to risks to their health and safety in school and during off-site visits. The employer must have a health and safety policy and arrangements to implement it. Key elements of a policy are listed in [Health and Safety: Responsibilities and Powers](#) (DfES 2001). The employer must assess the risks of all activities, introduce measures to manage those risks and tell their employees about the measures.
5. The employer, whether the LA or governing body, has the power to ensure that its health and safety policy is carried out. It must provide health and safety guidance to the school and ensure that staff members who are delegated tasks such as risk assessment and risk management are competent to carry them out. If risk assessment shows training is needed the employer must make sure this takes place. The employer cannot fulfil its statutory duty unless it monitors how well its schools are complying with its policy.
6. An LA has no responsibilities for, and no power to intervene in, pupil health and safety in schools where the governing body is the employer, except where safety (not health) is threatened by, for example, a breakdown in discipline. See [Health and Safety: Responsibilities and Powers](#) (DfES 2001).

#### Governing bodies

7. In all schools, the governing body controls the school premises (subject, in some cases, to the direction of the LA). Even if they do not employ school staff, governing bodies, to the extent that they control school premises, must take all reasonable measures to ensure that the premises and equipment on the premises are safe and do not put the health of pupils at risk while they are on the premises. The governing body (and headteacher) of a community, voluntary controlled, community special and maintained nursery school must comply with any directions given by the LA concerning the health and safety of persons in school, or on school activities elsewhere.

## Employees

8. Employees in any kind of school must:
- take reasonable care for the health and safety of pupils while at work;
  - cooperate with their employer and the governing body so far as is necessary to enable compliance with the above duties;
  - carry out activities in accordance with training and instructions;
  - inform the employer of any serious risk.

## ENFORCEMENT OF HEALTH AND SAFETY

9. Under the [Health and Safety at Work, etc. Act 1974](#), the HSE will normally consider action against the employer when something has gone seriously wrong as a result of neglect. However, in some circumstances, for example where an employee failed to take notice of the employer's policy or directions in respect of health and safety, the HSE may take action against the employee as well as or instead of the employer.

## Accidents involving pupils: reporting and recording

10. Schools must report to the HSE and record any injury that leads to a pupil being taken from the site of the accident to hospital, no matter by whom. This includes injury resulting from acts of violence. The [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995](#) (RIDDOR) apply. *RIDDOR Explained* is available, with a report form, from the HSE.
11. Employers with 10 or more employees must keep accident records about employees for three years for social security purposes. It is also good practice to record all accidents that befall pupils. See [Guidance on First Aid for Schools](#) (DfEE 1998).

## DISABILITY DISCRIMINATION ACT (DDA) 1995 (AS AMENDED BY THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001)

12. In brief, under [Part 4](#) of the [DDA 1995](#) schools (and LAs) are required to:
- not discriminate against disabled people in their access to education for reasons relating to their disability;
  - plan to increase progressively, and over time, access to schools by disabled pupils and prospective pupils.
13. Nothing in the DDA takes precedence over any other statutory duties that responsible bodies (such as the governing body of a school) might have. In carrying out their duties under [Part 4](#) of the DDA, governors must ensure that they comply with all other legal requirements upon them. However, the existence of other legislation does not provide an automatic defence in a case under [Part 4](#) of the DDA. Governors are expected to take whatever action is necessary to ensure they fulfil their responsibilities both under the DDA and under any other legislation that applies to them.
14. With regard to the [Health and Safety at Work, etc. Act 1974](#) and related Regulations, the DDA does not require governors to place employees or pupils at an inappropriate risk if a health and safety issue arises. However, changes to policies and procedures and/or the provision of training may mitigate any health and safety risks that arise in relation to disabled people or pupils. The risk assessment process carried out to comply with health and safety legislation may provide an opportunity to consider adjustments required by the DDA.

## EDUCATIONAL VISITS AND OFF-SITE ACTIVITIES INCLUDING ADVENTURE ACTIVITIES

15. Detailed information on planning and preparing for off-site activities can be found in [Health and Safety of Pupils on Educational Visits](#) (HASPEV) and the supplements to HASPEV (see below). Details and a range of documents about planning all off-site activities can be found in the [Health and safety on educational visits](#) section of the

TeacherNet website. Governing bodies that are employers have an equivalent role to that of the LA.

The HASPEV supplements provide advice on a number of topics:

- *Standards for LEAs in Overseeing Educational Visits* sets out the functions of the educational visits coordinator in schools and the levels of risk management that LAs and schools could use.
- *Standards for Adventure* is aimed at the teacher or youth worker who leads young people on adventure activities.
- *A Handbook for Group Leaders* is aimed at anyone who leads groups of young people on any kind of educational visit. It sets out good practice in supervision, ongoing risk assessment and emergency procedures.
- *Group Safety at Water Margins* is aimed at anyone who organises learning activities that take place near or in water, such as a walk along a river bank or seashore, collecting samples from ponds or streams, or paddling or walking in gentle, shallow water.

## HOME TO SCHOOL TRAVEL AND TRANSPORT

### School travel plans (STPs)

16. It is hoped that all schools in England will have developed an STP by the end of the decade. The development and implementation of a robust travel plan – which aims to cut car use on the school run by encouraging and enabling more walking, cycling and use of public transport in safety – is a straightforward and effective way for schools to demonstrate a strong commitment to the health of their pupils.
17. Work arising out of STPs on, for example, pedestrian or cycle training can also help to demonstrate a school's commitment towards pupils staying safe.
18. The STP process is also well placed to help schools when completing their Self-Evaluation Form. The results of STP work can help to demonstrate that a school is considering both the personal well-being and the development of learners, and that the views of learners, parents, carers and other stakeholders have been taken into account.

### Home to school transport

19. From September 2007 provisions introduced by the Education and Inspections Act 2006 replaced Section 509 of the Education Act 1996 for children below sixth-form age in England. New [Section 508B](#) of the Education Act 1996 requires LAs to ensure travel arrangements are made where necessary to facilitate children's attendance at school or another educational establishment. "Travel arrangements" may include arranging for someone to escort a child, paying some or all of a child's travelling expenses, or paying allowances, for example, to his or her parent for transporting the child.
20. LAs have wide discretion in deciding whether transport is necessary, but they must provide free home to school transport for eligible pupils of compulsory school age, namely those:
  - who live beyond statutory walking distance (see paragraph 24, below);
  - with mobility problems/special needs and who cannot therefore be expected to walk;
  - who cannot be expected to walk because of the nature of their route to school;
  - from low income families in certain circumstances (defined as families whose children are entitled to free school meals or who are in receipt of their maximum level of Working Tax Credit. See paragraph 21, below).

### Low income families

21. The provision for children from low income families will remove the lack of affordable transport as a barrier to school choice for these families. LAs must bring information about transport arrangements to the attention of parents.

22. The position will be different for primary- and secondary-school-age children from low income families.
- Primary: from 1 September 2007 children aged between 8 and 10 are eligible for free transport only if the child is a registered pupil at their nearest suitable school which is more than two miles from their home. If the child is attending a place other than a school under arrangements made by the LA, then the place must be at least two miles away from the child's home.
  - Secondary: from 1 September 2008 children aged 11 and over are eligible for free transport where:
    - i) the child is registered at a school which is between two and six miles from his or her home, and there are not more than three nearer suitable schools;
    - ii) the child is registered at his or her nearest suitable school based on his or her parents' religion or belief, that is between two and 15 miles from his or her home; or
    - iii) the child is attending a place other than a school under Section 19(1) of the Education act 1996 which is between two and six miles from home.

Where a pupil attends a school on the grounds of parental religion or belief that is not his or her nearest suitable school, the LA must take the wishes of the parents into account, but it is not obliged to provide free home to school transport. However, the LA can exercise its discretionary powers in deciding whether or not to provide transport to a school of parental religion or belief.

#### **Children not eligible for free home to school transport**

23. For children not covered by Section 508B of the Education Act 1996, [Section 508C](#) provides LAs with discretion to make travel arrangements where they deem it necessary to facilitate attendance. LAs have discretion:
- to pay all, or some, of the child's reasonable travelling expenses ([Section 508C](#));
  - to allow the child to travel in a spare seat on a school bus, to allow the child to travel on payment of a fare (under Section 46(1) of the Public Passenger Vehicles Act 1981); or
  - to provide them with concessionary travel on public transport (under Section 93(7)(b) and (c) of the Transport Act 1985).

#### **Statutory walking distances**

24. The statutory walking distances are two miles for pupils below the age of eight and three miles for those aged eight and over. They are measured along the shortest available route along which a child, accompanied by an adult if necessary, may walk in reasonable safety.

#### **Children with special educational needs (SEN)**

25. Pupils with a statement of SEN who have transport needs written into their statement must be provided with free transport to and from school.
- LAs are generally only under a duty to provide free transport to a child's nearest suitable school where the child cannot reasonably be expected to walk, having regard to his or her SEN status. The nearest suitable school for a pupil with SEN may well be within statutory walking distance. If a child is attending a school of parental preference – i.e. where the LA considers there is a suitable school nearer the pupil's home – there is no duty to provide free transport.
26. If a school of parental preference is named on the statement, and the LA decides not to provide transport, the statement should make clear that it is the responsibility of the parents to arrange transport.



### Complaints about school transport arrangements

27. LAs must publish their policy on home to school transport, including transport to denominational schools, and defend their policy locally.
28. If parents or carers have a query or complaint about the school transport arrangements for their child they should take this up with their LA, which should have an appeals procedure in place. The Department for Children, Schools and Families (DCSF) can only intervene if it considers the LA is not fulfilling its statutory duties or is acting unreasonably in the performance of its duties (see chapter 3 of this Guide, Governing body powers, duties and procedures, paragraph 14).

### FIRST AID

29. The [Health and Safety \(First Aid\) Regulations 1981](#) set out the requirements relating to employees. It is recommended that schools treat pupils as if they were employees for the purposes of first aid and provide first aid materials and expertise as appropriate, based on risk assessment.

### LITTER

30. Under [Section 89 of the Environmental Protection Act 1990](#) governing bodies must keep land that is under their control and is open to the air free from litter, refuse and dog excrement so far as is practicable.

### CURRICULAR IMPLICATIONS: KEY STAGE 4 USE OF LOW-LEVEL RADIOACTIVE SUBSTANCES

31. On 4 July 2008 Statutory Instrument 1701 [The Education \(Hazardous Equipment and Material in Schools\) \(Removal of Restrictions on Use\) \(England\) Regulations 2008](#) was laid before Parliament. From 1 September 2008 this has revoked the regulations requiring schools to have the Secretary of State's approval to use radioactive substances.

### MANAGING MEDICINES

32. Every school should develop policies to cover its own needs. The governing body has general responsibility for all of the school's policies even when the governing body is not the employer. The governing body should take account of the views of the headteacher, staff and parents in developing a policy on assisting pupils with medical needs. Where the LA is the employer, the school's governing body should follow the health and safety policies and procedures produced by the LA. The DCSF and the Department of Health (DH) have jointly published guidance on the TeacherNet website, [Managing medicines in schools and early years settings](#).

### SCHOOL FOOD AND MILK

#### Provision of meals

33. The LA or governing body may provide meals or other refreshments to pupils either on the school premises or elsewhere where education is being provided.

#### “Paid-for” lunch service

34. A duty requiring LAs to provide paid-for lunches where parents request them was introduced from April 2001.

#### Governing bodies' duties that arise from the delegation of funding for school meals

35. From April 2000 funding for school meals was delegated to all secondary schools. Primary and special schools can opt for delegation. Where a school has a delegated budget for meals the governing body takes on the responsibility for their provision. This includes, for example, providing free school meals to eligible pupils, providing paid-for

meals where requested, complying with the requirements of the nutritional standards for School Lunches Regulations as set out in the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) Regulations 2007 \(SI 2007/2359\)](#), which came into force on 10 September 2007, amended by the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) \(Amendment\) Regulations 2008 \(SI 2008/1800\)](#), and deciding the content and cost of meals.

### **Free meals (lunches)**

36. Where a request by or on behalf of a pupil is made, the LA or (where the budget for school meals is delegated to them) a school's governing body must provide a free meal for pupils whose parents receive:
- Income Support (IS);
  - Income-based Jobseeker's Allowance (IBJSA);
  - an income-related employment and support allowance (ESA);
  - support under [Part 6 of the Immigration and Asylum Act 1999](#);
  - Child Tax Credit (provided that they are not entitled to Working Tax Credit and have an annual income, assessed by HM Revenue & Customs, that from 6 April 2008 does not exceed £15,575);
  - the guaranteed element of State Pension Credit.

Children who receive Income Support or Income-based Jobseeker's Allowance in their own right are also entitled to free school meals.

37. The [Education and Inspections Act 2006](#) gives LAs the freedom to choose to offer all pupils free meals, fresh fruit, milk or other refreshments during the school day, regardless of family income. [Section 512](#) of the Education Act 1996, as amended by [Section 87](#) of the Education and Inspections Act 2006, replaces the former requirement to charge for all meals, milk and refreshment with a power to charge.

### **Children receiving nursery education**

38. The [Education \(School Lunches\) \(Prescribed Requirements\) \(England\) Order 2003 \(SI 2003/382\)](#) sets out an additional requirement for children who have not attained compulsory school age but receive education. These children must be registered pupils and be "receiving education both before and after the lunch period" before being eligible for free school meals or a paid-for meal. This requirement was introduced from April 2003.

### **Nutritional standards**

39. All school food must meet the minimum standards set out in the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) Regulations 2007 \(SI 2007/2359\)](#), which came into force on 10 September 2007, as amended by the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) \(Amendment\) Regulations 2008 \(SI 2008/1800\)](#). The amendments reflect minor technical changes to the school lunch requirements for LA-maintained primary, secondary and special schools and pupil referral units. The Regulations introduce combined food-based and nutrient-based standards for school lunches in primary schools from September 2008 and secondary and special schools and pupil referral units from September 2009. These require school lunches to provide prescribed amounts of essential nutrients, vitamins and minerals.
40. Where a school has a budgetary element for school meals delegated to it, the duty to ensure that all school food provided meets with these standards is transferred to the governing body of the school.
41. Additional guidance to assist with the implementation of the standards is available on the [School Food Trust website](#).
42. Subject to meeting the requirements of the nutritional standards Regulations, the LA or governing body decides the content, presentation and cost of school food, and where

there is a cash cafeteria system, sets the standard meals allowance for those entitled to free meals. All other pupils are to be charged the same amount for the same quantity of the same item, although the meals may be subsidised.

### Facilities for pupils not eating school meals

43. The LA or governing body must provide facilities for pupils not taking school meals to eat meals that they bring to school. The LA can decide what facilities are appropriate. However, it is considered that facilities would include accommodation, furniture and supervision so pupils can eat food they have brought from home in a civilised way and in suitable conditions. The school cannot charge pupils for using these facilities.
44. The governing body must allow the LA to use the facilities at a school to enable it to provide school meals according to its policy.

### Drinking water

45. The LA or governing body must ensure that there is easy access at all times to free, fresh drinking water for pupils.

### Milk

46. LAs and governing bodies are not obliged to offer milk to pupils. However, where LAs choose to do so, it must be provided free of charge to pupils whose parents receive:
  - Income Support (IS);
  - Income-based Jobseeker's Allowance (IBJSA);
  - an income-related employment and support allowance (ESA);
  - Support under [Part 6 of the Immigration and Asylum Act 1999](#);
  - Child Tax Credit (provided that they are not entitled to Working Tax Credit and have an annual income, assessed by HM Revenue & Customs, that from 6 April 2008 does not exceed £15,575);
  - the guaranteed element of State Pension Credit.
47. The duty to provide milk free of charge to eligible pupils is transferred to the governing body of former grant-maintained schools and grant-maintained special schools in England. See the [Education \(Transfer of Functions Concerning School Lunches, etc.\) \(England\) \(No. 2\) Order 1999](#).
48. European Union (EU) subsidy rules allow LAs and schools to offer nursery and primary school pupils a maximum of 250ml of subsidised milk a day for drinking. The EU School Milk Subsidy Scheme is administered by Rural Payments and any claims should be made through the LA.
49. Under the Department of Health's Welfare Food Scheme (WFS), day carers in Great Britain, including pre-schools, nurseries and childminders, may claim reimbursement for providing free milk to children under five in their care for two or more hours a day. Claims for children under five in LA pre-schools and reception classes should be made through the LA.

### SCHOOL UNIFORM

50. There is no legislation that deals specifically with school uniform, dress codes or other aspects of appearance such as hair colour and style, and the wearing of jewellery and make-up. It is for governing bodies to decide whether there should be a school uniform and other rules relating to appearance, and if so, what they should be. This flows from their responsibility to oversee the running of the school and for their duty to ensure that school policies promote good behaviour and discipline among the pupil body.
51. Headteachers can discipline pupils for breach of uniform/appearance policy as they have overall responsibility for maintaining discipline. However, the DCSF does not consider exclusion to be an appropriate response to breaches of school uniform/appearance

policy, except where they are persistent and defiant.

52. Schools should consult widely on proposed school uniform policies and changes to established policies. They should ensure their policies are fair and reasonable and have regard to their obligations under the [Human Rights Act 1998](#) and anti-discrimination legislation. They should also give high priority to the cost of the uniform.
53. Schools should ensure that the chosen uniform is affordable and does not act as a barrier to parents when choosing a school. They should be able to demonstrate to parents how best value has been achieved and keep the cost of supplying the uniform under review. Guidance on school uniform and related policies can be viewed on the [TeacherNet website](#).

### **SAFEGUARDING AND PROMOTING THE WELFARE OF PUPILS – INCLUDING CHILD PROTECTION**

54. [Section 175 of the Education Act 2002](#) came into force on 1 June 2004 and placed a duty on LAs, the governing bodies of maintained schools and the governing bodies of further education institutions to have arrangements in place to ensure that they:
- exercise their functions with a view to safeguarding and promoting the welfare of children;
  - have regard to any guidance issued by the Secretary of State for Children, Schools and Families when drawing up those arrangements.
55. “Safeguarding” covers more than the contribution made to child protection in relation to individual children. It encompasses issues such as pupil health and safety, and bullying, about which there are specific statutory requirements. It also includes a range of other issues, for example: arrangements for meeting the medical needs of children with medical conditions; providing first aid; school security; and drugs and substance misuse (about which the Secretary of State for Children, Schools and Families has issued guidance). There may also be other safeguarding issues that are specific to the local area.
56. Where there are statutory requirements, governing bodies should ensure their school has policies and procedures in place that satisfy them and comply with any guidance issued by the Secretary of State for Children, Schools and Families. Similarly, arrangements about matters on which the Secretary of State has issued guidance should be addressed by compliant policies and procedures or ones that achieve the same effect. Governing bodies also need to be able to show that they have considered whether children, including individual children in their area or establishment, have any specific safeguarding needs in addition to those covered by guidance. If so, governing bodies need to be able to show that they have policies and procedures in place to meet those needs.
57. Governing bodies are therefore accountable for ensuring their establishment has effective child protection policies and procedures in place that are in accordance with guidance issued by the Secretary of State for Children, Schools and Families, any LA guidance and locally agreed inter-agency procedures.

### **Allegations against staff and volunteers**

58. Procedures which meet the requirements discussed in paragraphs 56 and 57, above, should be in place for dealing with allegations of abuse against members of staff and volunteers who work with children. However, neither the governing body nor individual governors has an automatic role in dealing with individual cases of abuse, or a right to know details of such cases (except when exercising their disciplinary functions in respect of allegations against a member of staff).
59. Chairs of governing bodies are expected to work with headteachers (unless the allegation concerns the headteacher) and LA officers to confirm the facts about individual cases and to reach a joint decision on the way forward in each case. Chairs have a crucial role to play in deciding courses of action, including disciplinary action, in those cases where a criminal investigation may not be required. In cases where allegations have been

substantiated, the chair should work with the LA designated officer and headteacher to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future. Detailed advice on dealing with allegations against staff is included in *Safeguarding Children and Safer Recruitment in Education*, which sets out particular roles for individuals involved in dealing with allegations as well as timescales for different stages in the disciplinary or criminal process. This advice aims to assist all schools and Further Education Colleges to review and, where appropriate, modify their practice and procedures for dealing with allegations of abuse made against teachers and education staff. The guidance can be downloaded from the [TeacherNet website](#).

60. It is important that school staff do not investigate cases of suspected abuse themselves. That is the responsibility of the police and the LA children's social care department. However, schools can be the very first link in the chain as they are largely in the lead on the identification of pupils suffering from abuse or neglect and referral of cases to children's social care. Schools should cooperate fully with police and children's social care in any child abuse investigations.
61. Some governing bodies have found it helpful for an individual member of the governing body to champion child protection issues within the school, liaise with the headteacher about them and provide information and reports to the governing body. However, it is not usually appropriate for that person to take the lead in dealing with allegations of abuse made against the headteacher. That is more properly the role of the chair of governors, or in the absence of a chair, the vice-chair. Whether the governing body acts collectively or an individual member takes the lead, it is helpful if all members of governing bodies undertake training about child protection to ensure they have the knowledge and information needed to perform their functions and understand their responsibilities.
62. Governors should ensure that a senior member of the school's leadership team is designated to take lead responsibility for dealing with child protection issues, providing advice and support to other staff, liaising with the LA and working with other agencies.

### Safe recruitment procedures

63. Vetting applicants and prospective volunteers working with children to ensure they are not unsuitable is a very important aspect of child protection. Guidance about this can be found in the Checking applicants section of chapter 10 of this Guide, Staffing, and also in *Safeguarding Children and Safer Recruitment in Education*, which is available to download from the [TeacherNet website](#).

### PROMOTING THE WELL-BEING OF PUPILS

64. The *Education and Inspections Act 2006* places a corresponding duty on governing bodies to promote well-being. The duty came into effect in September 2007.
65. "Well-being" is defined in the *Children Act 2004* in terms of:
- physical and mental health and emotional well-being;
  - protection from harm and neglect;
  - education, training and recreation;
  - the contribution children make to society;
  - social and economic well-being.
66. These are the five Every Child Matters outcomes:
- being healthy;
  - staying safe;
  - enjoying and achieving;
  - making a positive contribution;
  - achieving economic well-being.

It is expected that governing bodies will keep under review the contribution their school is making to each of the five outcomes, and satisfy themselves that this contribution is

appropriate to the needs of their pupils and communities.

### PROMOTING COMMUNITY COHESION

67. The [Education and Inspections Act 2006](#) placed a duty on the governing bodies of maintained schools to promote community cohesion. The duty came into effect in September 2007. Alongside this, Ofsted has included schools' contributions to promoting community cohesion in its inspections since September 2008.
68. In July 2007 the Government published guidance for schools on the new duty to promote community cohesion. The guidance defines community cohesion and outlines the role for schools in promoting community cohesion, describing the work that many schools already do to promote it as examples of good practice. The duty to promote community cohesion links closely with the duty to promote well-being and in particular with the "making a positive contribution" and "achieving economic well-being" outcomes. The guidance also suggests how schools can encourage community cohesion through teaching and learning, raising the attainment of all pupils and providing a means for children, young people and their families to interact with people from different backgrounds. The guidance, along with case studies demonstrating good practice across a range of schools, is available in the [Community cohesion](#) section of the TeacherNet website.

### PROVISION OF CHILDCARE AND OTHER INTEGRATED SERVICES IN SCHOOLS

69. Until September 2008 day care for children under eight provided by schools had to be registered by Ofsted under [Part 10 of the Children Act 1989](#). Since September 2008, under the new requirements for registration for both maintained and independent schools, if the circumstances set out in Section 34(2), 53(2) or 63(3) of the [Childcare Act 2006](#) apply, childcare provided directly by a school has no longer been required to be registered by Ofsted.
70. The [Childcare Act 2006](#) requires Ofsted to operate two registers: the Early Years Register (EYR) and the General Childcare Register (GCR). Providers of childcare for children aged up to the end of the [Early Years Foundation Stage \(EYFS\)](#) (1 September after the child's fifth birthday) will be required to register on the EYR, and will have to meet the requirements of the EYFS. The GCR has two parts: the compulsory part, on which providers of childcare for children from the end of the EYFS to age seven will be required to register, and a voluntary part, on which providers of childcare for children aged eight and over, and those providers of childcare for children under eight that are exempt from registering, can choose to be registered, if they meet the requirements.
71. Schools must register their early years provision with Ofsted on the EYR and will have to meet the requirements of the EYFS, if it is:
- for children aged from birth to under three years (excluding 'rising threes', i.e. those pupils who have not reached the age of three, but will do so before the expiry of their first term in school);
  - only for children who are not pupils of the school; this includes early years provision in a separate, discrete part of the school, such as a nursery for staff members and the community, where the school also has pupils in the early years age group, for example in a reception class.
72. Any childcare for children aged three and over that is provided directly by a school (providing at least one pupil from the school attends) but does not need to be registered by Ofsted will still be expected to meet the requirements for registration and will be inspected as part of the school inspection. For provision covering children aged three to the 1 September after the child's fifth birthday, schools will need to meet the requirements of the EYFS.
73. Under [Section 27 of the Education Act 2002](#), governing bodies of maintained schools have the power to provide community facilities for the benefit of families of pupils at the school, or people who live or work in the locality. Such services would include day care (providing care for children under eight other than on domestic premises).

74. Further information about the roles and responsibilities of governing bodies in managing community facilities can be found in chapter 22 of this Guide, Extended schools. Practical guidance and support can also be obtained from the LA.

### SCHOOL SECURITY

75. Management of school security is usually shared by the LA as employer with the governing body. Governing bodies as employers have overall responsibility to make the school secure as part of their health and safety duties. See the section about [school security](#) on the TeacherNet website.
76. Schools have the power to bar troublesome adults from the school premises. LAs and the governing bodies of foundation, voluntary aided and foundation special schools have a power under [Section 547](#) of the Education Act 1996 to authorise the removal from school premises of intruders causing a disturbance or nuisance. (In the case of foundation, voluntary aided and foundation special schools, the LA may do this only with the consent of the governing body.)
77. Section 550AA of the Education Act 1996 inserted under [Section 45 of the Crime Reduction Act 2006](#) introduced, from 31 May 2007, a power for headteachers and other members of school staff to search, without consent, a pupil whom they reasonably suspect is carrying a knife or other weapon. The DCSF guidance [Screening and Searching of Pupils for Weapons: Guidance for School Staff](#) is available on the TeacherNet website.

### RIGHTS OF WAY

78. The Highways Act 1980 provides for a right of way across school property to be diverted or extinguished where the safety of pupils or staff is placed at risk. See guidance on rights of way under [school security](#) on the TeacherNet website. The Department for Environment, Food and Rural Affairs has consulted on giving schools, among others, an entitlement to apply for such diversion or closure and a right of appeal on refusal. Results of the consultation can be found at <http://www.defra.gov.uk/wildlife-countryside/access/prow/apply.htm>

### PLAYGROUND SUPERVISION

79. The DCSF does not have a recommendation for the number of adults that should be in charge of pupils during lunch and other breaks. Schools are best placed, on behalf of the employer, to assess the local risks and to put in enough competent supervisors to manage the risks. Parents need to be told at what time the school begins to supervise the children at the start of the school day and at what time in the afternoon the supervision ends.

### DUTY TO REPORT INCIDENTS

80. It is important that schools have arrangements for recording and reporting to the police and LA incidents of crime and loss (where appropriate). Under the RIDDOR, injuries to a person at work, such as a teacher or self-employed person working on the premises, must be reported to the HSE. An accident that happens to a pupil must be reported to the HSE if the pupil is killed or taken by anyone from the site of the accident to hospital and the accident arises out of or in connection with work. See [Guidance on First Aid for Schools](#).

### USE OF FORCE TO CONTROL OR RESTRAIN PUPILS

81. [Section 93](#) of the Education and Inspections Act 2006 gives school staff statutory power to use reasonable force to control or restrain pupils in certain circumstances. Governors should be aware of the general DCSF guidance on [The Use of Force to Control or Restrain Pupils](#). They should also be aware of the DCSF and DH [Guidance on the Use of](#)

*Restrictive Physical Interventions for Staff Working with Children and Adults Who Display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders, and the DCSF Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties.*

## **THE LAW**

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

### **Health and safety**

The Health and Safety at Work, etc. Act 1974

The Management of Health and Safety at Work Regulations 1999: SI 1999/3242

### **Duty of school governors and headteachers to comply with directions on health and safety from the LA**

The Education Act 2002: Section 29(5)

### **Duty of LAs, schools of all kinds and further education institutions to have arrangements for carrying out the functions with a view to safeguarding and promoting the welfare of children**

The Education Act 2002: Section 175

### **Accidents: reporting and recording**

Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995: SI 1995/3163

Social Security (Claims and Payments) Regulations 1987: SI 1987/1968

### **Educational visits: adventure activities**

Adventure Activities Licensing Regulations 2004: SI 2004/1309

Adventure Activities (Enforcing Authority) Regulations 2004: SI 2004/1359

The Activities Centres (Young Persons' Safety) Act 1995

Adventure Activities Licensing (Amendment) Regulations 2007: SI 2007/446

### **Power of members of staff to search school pupils for weapons**

The Education Act 1996: Section 550AA inserted under Section 45 of the Violent Crime Reduction Act 2006

### **First aid**

The Health and Safety (First Aid) Regulations 1981

### **Litter**

The Environmental Protection Act 1990: Sections 89, 91 and 92

### **Low-level radioactive sources (for use in the curriculum)**

Regulation 7 of the Education (Schools and Further and Higher Education) Regulations 1989: SI 1989/351

### **Nutritional standards**

Education (Nutritional Standards and Requirements for School Food) (England)



Regulations 2007: SI 2007/2359

### **Other**

The Children Act 1989: Sections 27 and 47

The Education Act 1996: Sections 512 and 542

Education (School Premises) Regulations 1999: SI 1999/2

Education and Inspections Act 2006: Sections 76–77 and 84, Schedule 8

### **GUIDANCE**

#### **Health and safety**

The [Health and safety](#) section of the TeacherNet website

Health and Safety: Responsibilities and Powers (DfES 2001) is available to download from the [TeacherNet website](#) and is available free of charge from DCSF Publications. Telephone 0845 602 2260

The [Health and Safety Executive \(HSE\)](#) website

[HSE free leaflets for the education sector](#)

[HSE free leaflets on risk assessment](#)

A priced document is available from [HSE Books: Safety Policies in the Education Sector](#)

#### **Accidents: reporting and recording**

[Guidance on First Aid for Schools](#) – a good-practice guide (DfEE 1998). Free on request from DCSF Publications. Telephone 0845 602 2260

[Reporting of School Accidents \(HSE\)](#)

[Incident contact website \(RIDDOR\)](#)

#### **Educational visits including adventure activities**

[Visits guidance on TeacherNet](#)

[Group Safety at Water Margins \(DfES and CCPR 2003\)](#)

[A Handbook for Group Leaders \(DfES 2002\)](#)

[Health and Safety of Pupils on Educational Visits](#) – a good-practice guide (DfEE 1998)

[Standards for Adventure \(DfES 2002\)](#)

[Standards for LEAs in Overseeing Educational Visits \(DfES 2002\)](#)

These publications are available free from DCSF Publications. Telephone 0845 602 2260

[Guidance to the Licensing Authority on the Adventure Activities Licensing Regulations 2004 \(HSE, £11.50\)](#)

#### **First aid**

[Guidance on First Aid for Schools: A Good Practice Guide](#). Also available free on request from DCSF Publications. Telephone: 0845 602 2260

[HSE First aid at work website](#)

#### **Low-level radioactive sources (use in the curriculum)**

[Managing Ionising Radiation and Radioactive Substances in Schools etc.](#) is available from the [Consortium of Local Authorities Provision for Science Services \(CLEAPSS\)](#).

### **Managing pupils' medicines**

[Managing Medicines in Schools and Early Years Settings](#) (DfES/DH 2005)

DfEE Circular 10/96: The 1996 School Premises Regulations

Building Bulletin 87: Guidelines for Environmental Design in Schools DfEE

Managing School Facilities Guide 4: Improving Security in Schools DfEE

Managing School Facilities Guide 6: Fire Safety

DfEE 0029/2000: Standards for School Premises. This can be ordered from DCSF Publications. Telephone 0845 602 2260

### **Safeguarding and promoting the welfare of pupils**

Safeguarding Children and Safer Recruitment in Education (DfES/4217/2006). This document is available from the TeacherNet website, which also contains further advice and examples of good practice intended to complement the guidance above

### **School security**

The DCSF has published [guidance](#) on screening and searching for weapons to coincide with the power to search for weapons which came into effect on 31 May 2007, under Section 550AA of the Education Act 1996 inserted under [Section 45 of the Crime Reduction Act 2006](#). This also includes advice on the school's power to screen at random.

The [School security](#) section of the TeacherNet website lists and contains information on guidance that is available, including School Security: Dealing with Troublemakers (DfEE and The Home Office 1997) and Can You See What They See? (DfES video 2001), which are available free on request from DCSF Publications. Telephone 0845 602 2260

DfEE Guide 4 in the series on managing school facilities, Improving Security in Schools, ISBN 0 11 270916 8

### **School uniform**

DCSF guidance to schools on school uniform and related policies (published October 2007) is available on the [TeacherNet website](#)

### **Milk for nursery schools**

Nursery Milk Guide, available from:  
The Welfare Food Reimbursement Unit (WFRU)  
PO Box 1  
Corby  
Northamptonshire NN17 1GX  
Tel: 0153 640 8008

Further information is available on the [School Milk Project website](#)

# 17 EQUAL OPPORTUNITIES AND SCHOOL GOVERNORS

## CHAPTER SUMMARY

This chapter outlines how equality legislation applies to schools, both in their role as employers and in the way that they provide education to the pupils in their care. The law prohibits discrimination based on sex (including gender reassignment), race, disability, religion or belief, sexual orientation and age by schools in their role as employers, and also requires them not to discriminate in the provision of education on all these grounds except age and gender reassignment. This chapter explains some differences in the way that different types of discrimination are dealt with, and provides links to further guidance.

This chapter is a guide to the law and not a comprehensive guide to good practice for governors. Governing bodies should be ensuring that schools comply with all aspects of discrimination law, but the best way to do this is to ensure that principles of fairness and equality are applied in everything that the school does. Links to specific guidance on aspects of good practice are included where appropriate, and sources of more detailed guidance on the law are also flagged up.

Several equality enactments have come into force in the last few years. These include the prohibition of discrimination on grounds of age in relation to employment (October 2006) and the prohibition of discrimination on grounds of religion or belief and sexual orientation in relation to pupils in schools (April 2007). Specific duties on schools to promote equality in relation to disability have also come into force for secondary schools (December 2006) and for primary schools (December 2007). Also in force are similar specific duties in relation to gender (April 2007). Detailed guidance has already been made available for schools.

## GENERAL PROHIBITIONS

1. The governing body of a school must not discriminate against:
  - job applicants
  - existing members of staff
  - a child seeking admission to the school
  - existing pupils.
2. It must not discriminate either directly or indirectly on the grounds of:
  - race
  - disability
  - sex
  - sexual orientation
  - religion or belief
  - age (in relation to employment).

## DEFINITIONS OF DISCRIMINATION

3. Under the law, there are different categories of discrimination, with differences in the legal framework surrounding them.
4. “Direct discrimination” is unlawful for all protected grounds except, in some circumstances, age and disability in schools (where it can be justified). Direct discrimination happens when a person is treated less favourably than others in comparable circumstances because of a special characteristic such as sex, race or a disability. Direct age discrimination is unlawful only if it cannot be objectively justified. Direct disability discrimination against actual and prospective pupils can be justified where the reason for it is material to the circumstances of the case and substantial.

5. “Indirect discrimination” occurs when a provision, criterion or practice is applied equally to all but has a different impact on members of one or more protected groups, of which the complainant is one, and is placed at a disadvantage as a result. Indirect discrimination is unlawful unless it can be justified for reasons unrelated to the characteristic in question. (An example might be a physical strength test, which could discriminate against women, and which might be justified in relation to a job needing heavy lifting, but not to teaching.)
6. “Victimisation” is the practice of treating a person less favourably because they have taken action in respect of discrimination, for example by bringing a complaint or giving evidence for a colleague. Victimisation is also unlawful.
7. “Harassment” is any unwanted conduct which violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them, on grounds of one of the relevant characteristics such as sex or race. Harassment is also unlawful in some of the situations covered by discrimination law.

### **DISCRIMINATION AGAINST JOB APPLICANTS OR EXISTING MEMBERS OF STAFF**

8. The governing body must not discriminate against an applicant for a post, or against an existing member of staff, on grounds of sex, race, sexual orientation, religion or belief, being married, being in a civil partnership, disability, gender reassignment or age. However, unlike other discrimination strands, direct age discrimination will not be unlawful if it can be shown to be objectively justified. In relation to disability but no other strand, there is an obligation to make reasonable adjustments in order to remove the substantial disadvantage created by the disability.
9. Governors need to ensure that there is no unlawful discrimination in relation to matters such as:
  - recruitment procedures and selection standards
  - conditions of employment
  - opportunities for promotion
  - transfer
  - training or other benefits
  - discipline and grievance procedures
  - dismissals.

### **Genuine occupational requirements**

10. There are specific legal provisions which recognise that there may be some narrow circumstances where employers will be allowed a defence to a claim of less favourable treatment on a particular “discrimination” ground. These are based on a particular quality (such as being of a specific sex or age) being a genuine occupational requirement (GOR) for a particular job (see individual discrimination strands for details). The burden of establishing a GOR defence rests with the employer. In the main it will only apply in respect of treatment linked to recruitment and refusing someone a post or training, and, in some circumstances, to dismissal from a post.
11. Schools should bear in mind that a GOR must be what it says: genuine. A preference, however strongly held, for someone of a particular sex, sexual orientation, race or age to take up a job is not of itself a GOR for someone of that particular sex, sexual orientation, race or age to fill the post, and in those circumstances it will not be sufficient to raise GOR as a defence to a claim of discrimination.

### **DISCRIMINATION AGAINST A CHILD SEEKING ADMISSION OR AN EXISTING PUPIL**

#### **Areas in which there are specific duties to promote equality**

12. There are currently three areas where the law goes beyond the general prohibition on discrimination and imposes both general and specific duties on public authorities – which include schools – to promote equality. These areas are race, disability and sex. The duties and other key provisions are described in the relevant paragraphs below.

## RACE DISCRIMINATION

13. Under the [Race Relations Act 1976](#), the governing body must not discriminate against a child on grounds of race in:
- admission to the school;
  - providing teaching or allocating him or her to particular types of classes;
  - applying standards of behaviour, dress and appearance;
  - giving pupils careers guidance and work experience;
  - conferring access to other benefits, facilities or services.
14. [The Race Relations \(Amendment\) Act 2000](#) (RRAA), which amended the Race Relations Act 1976, requires schools and Local Authorities (LAs) and other public bodies to:
- eliminate unlawful racial discrimination;
  - promote equality of opportunity;
  - promote good relations between persons of different racial groups.
15. The statutory duty requires educational establishments to take proactive steps to tackle racial discrimination, and promote equality of opportunity and good race relations. The specific duties that all educational establishments will be expected to comply with are as follows:
- to have a written policy on race equality;
  - to assess and monitor the impact of their policies on different racial groups of pupils, staff and parents, with the emphasis on the attainment of different racial groups of pupils;
  - to make information available about their policies to promote race equality;
  - to take steps to publish annually the results of monitoring;
  - to take account of the RRAA general duties for public bodies.
16. The governing body has a legal responsibility to ensure that a school meets its statutory duty; in particular that it draws up a race equality policy that reflects the needs and ethnic population of its pupils. The governing body is also required to ensure that a school's equality policy remains up-to-date and its principles are upheld in the school and shared with parents and carers.
17. An effective school policy should be part of the school's development plan and deal with the main areas that are relevant to promoting the general duty. Thus, a good race equality policy might deal with:
- pupils' attainment and progress
  - curriculum teaching and learning
  - pupil behaviour
  - discipline and exclusions
  - racial harassment and bullying
  - the school values.
18. A school's race equality policy can be combined with another policy, such as an equal opportunities or diversity policy, but in order to comply with the law, the race equality policy should be clearly identifiable and easily available. For example, a governing body might decide to make a school's race equality policy a separate section, or series of sections, within an overall equality policy.
19. Ofsted is required to inspect and report on whether or not schools are meeting the RRAA general duty and the specific duties. Ofsted will also look at incidents of bullying, racist bullying, exclusions and absentees. Governors should note that following the publication of the Macpherson Report of the Stephen Lawrence Inquiry, they are also required to record all racist incidents that take place in the school, and report them to their LA at least annually. Each LA is required to determine its own procedures for recording, reporting and following up racist incidents. Ofsted's new Self-Evaluation Form plays a crucial role in the new inspection procedures, and schools may wish to use the form to demonstrate

examples of effective race equality policies.

20. The Commission for Racial Equality (CRE), now part of the Equality and Human Rights Commission (EHRC), has produced a statutory Code of Practice and four non-statutory guides, including *The Duty to Promote Race Equality: A Guide for Schools*, to help authorities in England and Wales meet their duties under the Race Relations (Amendment) Act 2000. Each publication is described in the guidance section below (and can be found on the [EHRC website](#)).

## DISABILITY DISCRIMINATION

21. Disability discrimination works in slightly different ways from other strands of discrimination legislation, for example it is not unlawful to discriminate in favour of disabled people, and employers are required to make “reasonable adjustments” to deal with particular problems facing disabled applications and staff.
22. For schools, the [Disability Discrimination Act 1995](#) (DDA), as amended by the [Disability Discrimination Act 2005](#), introduces a general duty to have regard to the need to promote equality of opportunity for disabled persons and eliminate discrimination, and a specific duty to publish a Disability Equality Scheme. Secondary schools had to do this by 4 December 2006 and primary and special schools had to comply by 3 December 2007. Detailed DCSF guidance on the disability duties has been provided in the publication *Promoting Disability Equality in Schools*. It is hoped that the necessary monitoring and reporting can be done as part of existing work in schools – the aim of the new duties is to achieve greater equality rather than to impose bureaucratic burdens on schools.
23. The general duty requires schools, when carrying out their functions, to:
- promote equality of opportunity between disabled people and other people;
  - eliminate discrimination that is unlawful under the DDA;
  - eliminate harassment of disabled people that is related to their disability;
  - promote positive attitudes towards disabled people;
  - encourage participation by disabled people in public life;
  - take steps to meet disabled people’s needs, even if this requires more favourable treatment.
24. The specific duties require schools to put in place a Disability Equality Scheme. Detailed guidance on this is available in *Promoting Disability Equality in Schools*, but, in summary, schools will need to:
- outline the purpose and direction of the scheme and the school’s main priorities;
  - demonstrate the involvement of disabled pupils, staff and parents;
  - set out arrangements for gathering information;
  - set out the implementation and publishing plans;
  - set out arrangements for assessing the impact of school policies, evaluating, reporting on and reviewing the scheme.
25. The DDA sets out the following.
- Under [Part 2](#), employers including LAs and governing bodies must not discriminate unlawfully against disabled people applying for jobs, or against existing disabled staff. The definition of disability is wide and can cover people with hidden impairments, or even conditions where the effects are significantly reduced by medication or other treatments, such as diabetes.
  - It is unlawful discrimination for an employer to treat a person less favourably than others for a reason to do with his or her disability unless the treatment can be justified by the employer. Justification for less favourable treatment can only be for a substantial (i.e. one likely to be more than trivial or minor) and material reason.
  - Direct discrimination cannot be justified. It imposes a duty on employers to make “reasonable adjustments” if the premises or employment arrangements substantially disadvantage a disabled person compared to a non-disabled person. Examples of adjustments might include:

- the installation of a ramp for an employee who uses a wheelchair;
  - meetings held in a ground-floor room rather than on the first floor; or
  - staff notices in large print, Braille or on audiotape for someone with a visual impairment.
- Whether or not a particular adjustment is “reasonable” depends on a number of factors, such as cost, practicability and effectiveness. Failure to discharge this duty will also constitute unlawful discrimination, and there is no justification available for failure to make a reasonable adjustment. But clearly there is no duty to make an “unreasonable” adjustment.
  - Direct discrimination cannot be justified. Direct discrimination means treating someone less favourably on the ground of his or her disability. In general, this means that the disabled person would not have received that treatment “but for” his or her disability. However, the disability does not have to be the only (or even the main) cause of the treatment complained of (provided that it is an effective cause determined objectively from all the circumstances).
  - **Part 3** makes it unlawful for any service provider to discriminate against a disabled person:
    - by refusing to provide (or deliberately not providing) to him or her any service it provides to members of the public;
    - by failing to comply with the duty to make reasonable adjustments;
    - in the standard of service it provides or the manner in which it provides it;
    - in the terms on which it provides the service.
  - The same prohibition and duties to make reasonable adjustment apply with respect to providers of goods and facilities. Non-educational services provided by schools to the public are governed by these duties.
  - **Part 4** prohibits unlawful discrimination by schools against either current or prospective disabled pupils in their access to education, and in the provision of education or associated services provided by schools to their pupils. Schools are required to make reasonable adjustments to make sure that disabled pupils are not placed at a substantial disadvantage. This not only includes making reasonable adjustments for individual pupils, but also applies to whole-school policies, such as school trips. For schools the reasonable adjustments duty under Part 4 does not include the provision of auxiliary aids and services, as these are provided by the special educational needs (SEN) framework, and over time through the planning duties (see below) by the installation of loop systems, ramps, handrails, specialist furniture, and so on.
  - Schools and LAs have duties (known as the planning duties) under the DDA to plan to increase over time the accessibility of schools to disabled pupils. Plans and strategies on a rolling three-year basis need to be in place. The nature and content of schools’ plans will depend on:
    - their disabled pupil population;
    - any prospective pupils who are disabled;
    - the size of the school;
    - the resources available to them; and
    - the strategic steer given by the LA.

Planning will include increasing access for disabled pupils to the school curriculum, improving access to the physical environment of the school and improving the delivery of written information to disabled pupils.

- Ofsted will monitor schools’ accessibility plans and the Secretary of State for Children, Schools and Families can intervene if a school is not complying with the planning duty. Schools might find it helpful to extend their local complaints procedure to cover their accessibility plans. Schools should make best use of available expertise: disabled pupils, their parents, specialist teachers, local voluntary organisations and others can all help to identify practices and arrangements that act as a barrier to including disabled pupils; LAs also provide

helpful advice and information. With their links to the community, governors are well placed to enlist the support of people who might be able to help the school draw up and implement its plan.

- Guidance is provided in *Accessible Schools: Planning to Increase Access to Schools for Disabled Pupils*.

26. The EHRC can provide information and advice to both schools and parents relating to claims of alleged discrimination. It also provides an independent conciliation service for disputes arising from schools' duties.

### SEX DISCRIMINATION

27. **Part 3 of the Equality Act 2006** amended the Sex Discrimination Act 1975 (SDA) to introduce a duty to promote gender equality. Schools must demonstrate that they are promoting equality for women and men and that they are eliminating sexual discrimination and harassment. The duty also extends to having a gender equality scheme in place.

28. The duties require each school to:

- prepare and publish a gender equality scheme, showing how it intends to fulfil its general and specific duties and setting out its gender equality objectives;
- consider the need to include objectives to address the causes of any gender pay gap in formulating its overall objectives;
- gather and use information on how the school's policies and practices affect gender equality in the workforce and in the delivery of services;
- consult stakeholders and take account of relevant information in order to determine its gender equality objectives;
- assess the impact of its current and proposed policies and practices on gender equality;
- implement the actions set out in its scheme within three years;
- report against the scheme every year and review the scheme at least every three years.

29. A gender equality scheme needs to show how the school will meet its obligations under both the general and specific duties. It needs to include the school's gender equality objectives, including any pay objectives, and show the actions that it has taken, or intends to take, to:

- gather and use information that is relevant to promoting gender equality and eliminating discrimination;
- consult stakeholders in the preparation of its scheme (including setting the objectives);
- assess the impact or likely impact of existing and proposed policies and practices on gender equality;
- implement the actions set out in the scheme.

30. Guidance for schools on how to develop a gender equality scheme and what should be included has been developed by the Equal Opportunities Commission (EOC), now part of the EHRC, and is available on the [EHRC website](#).

31. Under the SDA, the governing body must not discriminate on grounds of sex:

- against a child seeking admission to the school (however, it does permit single-sex schools to remain single sex);
- when providing teaching or allocating pupils to particular types of classes (for example, insisting that girls at a mixed school study a second modern language while boys take business studies);
- when applying standards of behaviour, dress and appearance (although different but comparable rules for boys and girls as regards dress or appearance are not necessarily unlawful);
- by excluding pupils or subjecting them to other types of detriment (for example, detention);



- in giving pupils careers guidance and work experience;
  - in giving pupils access to other benefits, facilities or services.
32. LAs and school governing bodies have a general duty to ensure that facilities for education provided by them, and any ancillary benefits or services, are provided without sex discrimination.
33. Whilst there is no express exemption in the same way that there is for same-sex schools, it may not be unlawful to have some single-sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes. So, for example, it would be lawful to teach sex education to single-sex classes, as long as the classes were provided to both boys and girls, but unlawful to provide remedial classes just for boys who needed help with reading without doing the same for girls in a similar position.
34. Although the SDA forbids discrimination in access to benefits, facilities and services (for example, school gyms in mixed-sex schools); Section 44 of the Act contains an exception which permits single-sex sports. It applies to participation in any sport or game, or other activity of a competitive nature, where the physical strength, stamina or physique of the average woman (or girl) would put her at a disadvantage in competition with the average man (or boy). But while this exception might permit a mixed school to have a boys-only football team, the school would still have to allow girls equal opportunities to participate in comparable sporting activities.
35. Sport and leisure facilities can also be confined to one sex (under Section 35 of the SDA) if it can be demonstrated that the facilities or services are such that users of one sex are likely to suffer serious embarrassment at the presence of the opposite sex. This also applies where the facilities or services are such that a user is likely to be in a state of undress and might reasonably object to the presence of a user of the opposite sex. In the context of schools, this exception applies only in relation to the use of facilities outside school hours, otherwise than in connection with the provision of education, for example, the opening of a school swimming pool or other sports facilities to members of the public during school holidays. It does not override the general requirement not to discriminate – so while separate access might be justified, for example, if there were only one set of changing rooms, allowing access only ever to one sex would not be.
36. The SDA outlaws discrimination in employment on the grounds of sex. However, discrimination against a man or woman is permitted in cases where a person's sex is a genuine occupational qualification for the job (as strictly defined by Section 7 of the Act). For example, this would apply where a job had to be held by a man and not a woman (or vice versa) in order to preserve decency or privacy, such as where the job must involve the individual visiting changing rooms whilst they are in use, as for example, PE teachers.
37. Employment discrimination against transgendered people is unlawful under the SDA (as amended by the [Sex Discrimination \(Gender Reassignment\) Regulations 1999](#)). It is unlawful to treat a person less favourably on the basis that they have declared an intention to undergo, are undergoing or have undergone, gender reassignment – which is defined as a process carried out under medical supervision for the purpose of reassigning a person's sex (but which does not need to involve medical or surgical treatment). Guidance for employers on dealing with gender reassignment is available at the [Government Equalities Office website](#).
38. Under the SDA it is unlawful to discriminate in relation to employment on the basis that a person is married or in a civil partnership.

## AREAS IN WHICH THERE ARE NO DUTIES TO PROMOTE EQUALITY

There are currently two areas in which there are no duties to promote equality.

### Religion or belief and sexual orientation

39. Discrimination on the grounds of religion or belief and of sexual orientation is now

unlawful both in employment and in the delivery of education, although the law does not impose a duty on public authorities to promote equality actively in these areas.

40. Governing bodies should be aware of the [Employment Equality \(Sexual Orientation\) Regulations 2003](#) and the [Employment Equality \(Religion or Belief\) Regulations 2003](#) covering discrimination on grounds of sexual orientation and religion or belief, which apply to schools as employers. These Regulations apply to all aspects of employment including:
- recruitment;
  - terms and conditions;
  - promotions;
  - transfers;
  - dismissals;
  - training; and
  - all employment practices such as dress codes and disciplinary procedures.

They make it unlawful to discriminate directly or indirectly against or harass anyone because of his or her actual or perceived sexual orientation, religion or belief, or because he or she is friends with, or associates with, someone of a particular sexual orientation, religion or belief.

41. The Regulations set out strictly defined exceptions for cases where being of a particular religion or belief or a particular sexual orientation is a genuine and determining occupational requirement for a job.
42. [Sections 58–60 of the School Standards and Framework Act 1998](#) make specific provision for schools with a religious character in respect of the employment of some teachers of the same faith as the character of the school. These provisions are expressly preserved under the [Employment Equality \(Religion or Belief\) Regulations 2003](#).
43. It is unlikely that the exception for sexual orientation would permit discrimination in relation to employment by a school. Note that none of these provisions protects schools who discriminate against, harass or victimise staff because of their actual or perceived sexual orientation, and who then seek to rely on a claim that it is a requirement of their religion that they do so.
44. [Part 2 of the Equality Act 2006](#) and the [Equality Act \(Sexual Orientation\) Regulations 2007](#) both came into effect on 30 April 2007. These provisions mean that it is unlawful to discriminate against a pupil or prospective pupil on the grounds of his or her religion or belief, or sexual orientation (or that of a person he or she is associated with, such as a parent or guardian). They make it unlawful for maintained schools, independent schools and special schools to discriminate against a person in the following ways:
- in the terms on which they offer to admit him or her as a pupil;
  - by refusing to accept an application to admit him or her as a pupil;
  - where he or she is a pupil of the establishment:
    - in the way in which it affords him or her access to any benefit, facility or service;
    - by refusing him or her access to a benefit, facility or service;
    - by excluding him or her from the establishment;
    - by subjecting him or her to any other detriment.
45. The religion and belief provisions include some limited exceptions in relation to religious discrimination by faith schools, and to religious education and organised worship in all schools. There are no exceptions for schools in relation to discrimination on grounds of sexual orientation. Full guidance on the religion and belief and sexual orientation provisions has been made available to schools in the [Religion section](#) of TeacherNet's Equality area.

## AGE DISCRIMINATION

46. The [Employment Equality \(Age\) Regulations 2006](#) make age discrimination by employers unlawful. Age discrimination differs slightly from other grounds in that direct as well as

indirect age discrimination is not unlawful if it can be “objectively justified” – that is, shown to be a proportionate means of achieving a legitimate aim. This will be a strict test and not necessarily easy to demonstrate if legally challenged.

47. As with other discrimination legislation, the Regulations allow an employer, when recruiting for a post, to treat job applications differently on grounds of age if an age-related characteristic is a GOR for that post. An employer can also rely on this exception in matters of promotion, transfer and training and when dismissing a person from a post where a GOR applies. However, schools should be very cautious in assuming that they can demonstrate that age is a GOR in relation to any post. ACAS provides guidance on the [Age discrimination section](#) of its website. (N.B. Age discrimination law does not apply to the treatment of pupils in schools.)

## ENFORCEMENT

48. In relation to complaints in the employment context, the LA or the governing body (whichever is treated as the employer for the purposes of the Acts – see paragraphs 54–56, below) may be legally responsible for discriminatory acts against employees or applicants for jobs, including acts carried out by the headteacher or other members of staff. Employment-related cases are dealt with by Employment Tribunals.
49. Discrimination complaints involving issues such as the admission of, or equal opportunities for, pupils will generally be taken up first with the headteacher. They may then be referred to the governing body and/or the LA. If the school or LA cannot sort out the problem, it will be dealt with by the County Courts. (Different procedures apply in relation to pupils and disability – see paragraph 51, below.)
50. Any complaints about discrimination (other than disability) against pupils must be brought to the attention of the Secretary of State for Children, Schools and Families.
51. Claims of disability discrimination are heard by:
- the Special Educational Needs and Disability Tribunal (SENDIST) in relation to most educational claims;
  - admission appeal panels and independent appeal panels in relation to admissions and exclusions decisions, respectively;
  - an Employment Tribunal in relation to employment matters;
  - the County Court in relation to the provision of goods, facilities and services.
52. The Equality and Human Rights Commission (EHRC) has powers to enforce the specific duties by issuing a compliance notice to order the school to meet the specific duties within a certain timescale.
53. Much of UK legislation, as regards equal opportunity in the employment and vocational training field, reflects European Union (EU) Law. In addition to UK legislation, in certain circumstances, employees in the public sector may rely directly on EU law. Normally, however, EU rights such as a right to equal pay, equal treatment and non-discrimination on certain grounds are enforced in the UK through national legislation which has been shaped to reflect EU law.

## Who is the employer?

54. Where the school is a community school or a community special school, the LA is the employer of all staff.
55. However, even if the LA is technically the employer of the school staff, the governing body of a school with a delegated budget has powers over the appointment, suspension, discipline and dismissal of staff. Accordingly, where complaints are made about any discrimination concerning the exercise of those powers, it will normally be the governing body that is treated as the employer.
56. It follows that the governing body of a school with a delegated budget will generally be the respondent in Employment Tribunal discrimination cases brought by members of staff (or

job applicants). However, any award of compensation or costs made by a tribunal would have to be paid by the LA where they are the actual employer of the school staff. See the Education (Modification of Enactments Relating to Employment) Order 2003.

## THE LAW

**N.B. As legislation is often amended and new Regulations introduced, references made in this Guide may point to legislation that has been superseded. For an up-to-date list of legislation applying to schools, refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The Equal Pay Act 1970

The Sex Discrimination Act 1975

The Race Relations Act 1976

The Race Relations (Amendment) Act 2000

The Disability Discrimination Act 1995

The Disability Discrimination Act 1995 (Pensions) Regulations 2003: SI 2003/2770

The Disability Discrimination Act 1995 (Amendment) Regulations 2003: SI 2003/1673

The Disability Discrimination Act 2005

The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005: SI 2005/2966

The Disability Discrimination (Amendment) (Further and Higher Education) Regulations 2006: SI 2006/1721

The Special Educational Needs and Disability Act 2001

The Disability Rights Commission Act 1999

The Education Act 1996: Part 4

The Education (Modification of Enactments Relating to Employment) Order 2003: SI 2003/1964

The Human Rights Act 1998

The Employment Equality (Religion or Belief) Regulations 2003: SI 2003/1660

The Employment Equality (Sexual Orientation) Regulations 2003: SI 2003/1661

The Employment Equality (Sex Discrimination) Regulations 2005: SI 2005/2467

The Employment Equality (Age) Regulations 2006: SI 2006/1031

The Equality Act 2006

The Equality Act (Sexual Orientation) Regulations 2007

The Civil Partnership Act 2004

The Gender Recognition Act 2004

## GUIDANCE

Three equality commissions (the Equality Rights Commission, the Commission for Racial Equality and the Disability Rights Commission) merged in October 2007 to become the EHRC, which has responsibilities in relation to the entire body of discrimination law.

The Codes of Practice issued by the former commissions that are referred to in this chapter are all statutory Codes of Practice. While the Codes do not in themselves impose legal obligations, they will be admissible as evidence in any proceedings brought under the relevant Acts. If any provision of a Code appears to the Court or Tribunal to be

relevant to any question arising in the proceedings, it shall be taken into account in determining that question. The Codes are not an authoritative statement of the law, but following the guidance in a Code may help to avoid adverse judgement in any proceedings.

Other guidance available is not statutory but has been provided (some specifically for schools) to aid understanding of the relevant legislation. Contact information and helplines for the EHRC are as follows (see Disability discrimination, below, for the EHRC's dedicated disability helpline).

EHRC Helpline England Freepost RRL-GHUX-CTR Arndale House Arndale Centre Manchester, M4 3EQ Tel: 0845 604 6610 Textphone: 0845 604 6620 Fax: 0845 604 6630	EHRC Helpline Wales Freepost RRLR-UEYB UYZL 1st Floor 3 Callaghan Square Cardiff, CF10 5BT Tel: 0845 604 8810 Textphone: 0845 604 8820 Fax: 0845 603 8830	EHRC Helpline Scotland Freepost RRLG-GYLB-UJTA The Optima Building 58 Robertson Street Glasgow, G2 8DU Tel: 0845 604 5510 Textphone: 0845 604 5520 Fax: 0845 604 5530
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The Advisory, Conciliation and Arbitration Service (ACAS) is one of the organisations that offers advice to employers on complying with [anti-discrimination legislation](#). As it points out, where effective systems are in place to ensure that an organisation's staff are treated fairly and with consideration, it is likely to encounter few problems in complying with anti-discrimination legislation. The same applies to the treatment of all members of the school community.

### Disability discrimination

Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability (ISBN: 0 11 270954 0, The Stationery Office, £9.95)

Code of Practice for Schools explaining their new duties under [Part 4 of the Disability Discrimination Act 1995](#) (Disability Rights Commission, 2002)

A range of free DDA material, information and guidance is available from the EHRC disability helpline (videophone calls are available for those who require them):

EHRC Disability Helpline (England)  
Freepost MID02164  
Stratford-upon-Avon, CV37 9BR  
Tel: 08457 622 633  
Textphone: 08457 622 644  
Fax: 08457 778 878

Both the Code of Practice and the DDA material mentioned above can be found at the [Disability section](#) of the EHRC website.

[Accessible schools: Planning to increase access to schools for disabled pupils](#) (DfES 2001, Ref: LEA/0168/2001) Copies are available free of charge from DCSF Publications (tel: 0845 602 2260) and from the [SEN and disability section](#) of TeacherNet.

[Promoting Disability Equality in Schools](#) (DfES 2006, Ref: PPSLS/D35/1206/13)

### Sex discrimination

*A Guide to the Equal Pay Act 1970*: PL 743  
*A Guide to the Sex Discrimination Act 1975*: PL 955

The above guides are available free of charge from:

DCSF Publications Centre  
PO Box 5050  
Annesley  
Nottingham NG15 0DZ

Tel: 0845 602 2260

The EOC, now part of the EHRC, was the statutory body responsible for implementing the sex discrimination laws. The EOC also produced the following guides, now available from the EHRC:

*Code of Practice on Equal Pay* (available free of charge)

*Code of Practice* (ISBN: 0 11 701279 3)

*The gender equality duty and schools: Guidance for public authorities in England* (2007)

### **Sexual orientation**

[Sexual Orientation and the Workplace: A Guide for Employers and Employees](#) from:

ACAS

Brandon House

180 Borough High Street

London SE1 1LW

Tel: 08702 429090

Website: [www.acas.org.uk](http://www.acas.org.uk)

[The Equality Act \(Sexual Orientation\) Regulations 2007: Guidance for Schools](#) (DfES 2007) is also available as a Word document on the [DCSF website](#).

### **Religion or belief**

[Religion or Belief and the Workplace: A Guide for Employers and Employees](#) is available from ACAS at the address given above.

[The Equality Act 2006 Part 2: Discrimination on Grounds of Religion or Belief – Guidance for Schools](#) (DfES 2007). This guidance and other information is available from the [Religion section](#) of the Equality area on the [TeacherNet website](#).

### **Race discrimination and equality**

[Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment](#) (ISBN: 0 907920 29 2, CRE) The Code of Practice and other related material can be found on the [EHRC's website](#).

The CRE, now part of the EHRC, produced a statutory Code of Practice and four non-statutory guides to help authorities in England and Wales meet their duties under the [Race Relations \(Amendment\) Act 2000](#). They are available from the [EHRC website](#).

[Code of Practice on Reporting and Recording Racist Incidents](#). This was published in April 2000 by the Racist Incidents Standing Committee. It provides guidelines for local agencies to establish effective procedures and comprehensive systems for the reporting and recording of racist incidents, and suggests action to help victims of racism and to deal with perpetrators appropriately. It also encourages information-sharing between agencies.

[Bullying around Racism, Religion and Culture](#) (March 2006). Developed in partnership with anti-racist organisations, schools, LAs, professional associations, community and voluntary sector groups and young people themselves, the guidelines offer suggestions for lessons, staff training and anti-bullying strategies to help schools identify and prevent racist bullying and deal with it robustly, should it occur.

[The Stephen Lawrence Inquiry Report: Action Plan](#) (November 1999)

[DCSF's Ethnic Minority Achievement website](#). The site aims to provide support to LAs and schools by giving updates on DCSF work, providing documentation for ethnic background data collection, sharing the successful experiences of schools and LAs and signposting useful links and publications, which provide information and research on minority ethnic pupils' educational achievement.

[Race Equality in Education: Good Practice in Schools and Local Education Authorities](#) (Ofsted, November 2005). This survey report illustrates good practice in work on race

equality and education in schools and LAs in England.

## Age

ACAS provides [guidance on age discrimination](#).

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# 18 ORGANISATIONAL CHANGES TO THE SCHOOL

## CHAPTER SUMMARY

This chapter gives a brief description of how changes are made to the pattern and organisation of local school provision. It is not a comprehensive guide and more detailed advice can be found at the [DCSF School Organisation website](#).

From 25 May 2007, a new statutory framework applied to the decision-making process. School Organisation Committees (SOCs) were abolished and in most cases the decision-maker became the Local Authority (LA), with some decisions being taken by the Schools Adjudicator or the governing body. These arrangements reflect changes introduced by the [Education and Inspections Act 2006](#) and subordinate regulations.

The topics covered in this chapter include:

- changes requiring statutory proposals;
- who can publish statutory proposals;
- the process for establishing a new school;
- the process for closing a school and making other changes;
- revocation of proposals; and
- change of school category.

## CHANGES REQUIRING STATUTORY PROPOSALS

1. The pattern or organisation of maintained schools can only be changed by following a statutory proposal process, as set down by law. The first stage is a period of public consultation to ensure that those who may be affected by proposals have an opportunity to voice their views and have these taken into account. If those who wish to make the changes want to proceed, they must publish statutory proposals which allow for formal objections or comments to be made. The final decision on proposals is taken by the school governing body, LA or Schools Adjudicator depending on the type of proposals and other factors.
2. Statutory proposals must be published to:
  - set up a new school (e.g. to establish a brand new school or a replacement school for two or more schools that are merging);
  - close a school (except for voluntary and foundation schools in the specific circumstances outlined in paragraph 12, below);
  - make a prescribed alteration to an existing school, as follows:
    - close one of the sites of a split-site school (i.e. if the remaining site is one mile or more from the site which is to close);
    - substantially increase the physical capacity of a school (usually by 25 per cent or more unless it is anticipated that the school will revert to its former size within three years);
    - admit boys and girls instead of one sex only or vice versa;
    - change the age range of the school (e.g. to provide for early years or sixth-form pupils);
    - add, change or remove provision intended specifically for pupils with special educational needs (SEN);
    - end selective admission arrangements;
    - introduce, change or end boarding provision;
    - transfer a school from its existing site to another site, unless the new site is within 2 miles (3.218688 km) of the main entrance of the current site (except where the school is transferring to a site within another LA, in which case proposals must be published, regardless of the distance);
    - change the category of the school;

– acquire or remove a Trust (for foundation schools), give the Trust power to appoint a majority of the governing body, or remove that power (see chapter 19, Trust schools).

**WHO CAN PUBLISH STATUTORY PROPOSALS**

3. The table below shows who can publish different types of proposal.

Body	Type of proposal
Local Authority	<ul style="list-style-type: none"> <li>• Community schools – all proposals apart from proposals to remove selection from a grammar school. For a full list of alterations requiring the publication of proposals, see the guidance handbooks at the <a href="#">DCSF School Organisation website</a>.</li> <li>• Foundation schools – proposals to:                             <ul style="list-style-type: none"> <li>- establish a new school;</li> <li>- discontinue a school;</li> <li>- enlarge a school;</li> <li>- establish or remove SEN provision; or</li> <li>- establish a new sixth form.</li> </ul> </li> <li>• Voluntary schools – proposals to:                             <ul style="list-style-type: none"> <li>- discontinue a school;</li> <li>- enlarge a school;</li> <li>- establish or remove SEN provision; or</li> <li>- establish a new sixth form.</li> </ul> </li> <li>• Nursery schools – proposals to establish or discontinue a school or transfer to a new site. Proposals to be relieved of the duty to implement previously approved proposals (i.e. as above) that were originally published by the authority.</li> </ul>
Governors of foundation or voluntary schools	<ul style="list-style-type: none"> <li>• Alterations to their schools – for a full list of alterations requiring the publication of proposals, see guidance handbooks at the <a href="#">DCSF School Organisation website</a>.</li> <li>• Proposals to discontinue the school.</li> <li>• Proposals to be relieved of the duty to implement previously approved proposals published by the governing body.</li> <li>• Proposals to change the category of the school (but not the religious character of the school).</li> </ul>
Governors of community schools	<ul style="list-style-type: none"> <li>• Proposals to:                             <ul style="list-style-type: none"> <li>- enlarge a school physically;</li> <li>- add a sixth form; or</li> <li>- where the school is a grammar school, to end selective admission arrangements.</li> </ul> </li> <li>• Proposals to change the category of the school (but not the religious character of the school).</li> <li>• Proposals to be relieved of the duty to implement previously approved proposals published by the governing body.</li> </ul>
Proposers (any individual or body other than the LA or school governing body wanting to propose a new school)	<ul style="list-style-type: none"> <li>• Proposals to establish a new foundation or voluntary school.</li> <li>• Proposals to be relieved of the duty to implement previously approved proposals.</li> </ul>

Body	Type of proposal
Learning and Skills Council (LSC)	<ul style="list-style-type: none"> <li>• Proposals to discontinue any category of 16–19 school.</li> <li>• Proposals to discontinue any category of a weak or failing school sixth form.</li> <li>• Proposals to establish a new 16–19 foundation school.</li> </ul> <p>The final decision on the three proposals above will be decided by the LA or Adjudicator.</p> <p>Following an Area Inspection or to increase participation and achievement of, and range of learning opportunities for, 16- to 19-year-olds:</p> <ul style="list-style-type: none"> <li>• proposals to add a sixth form or change the age range of a sixth form by a year or more;</li> <li>• proposals to enlarge a sixth form, or to enlarge a 16–19 school;</li> <li>• proposals to close a sixth form.</li> </ul> <p>The three proposals above will be decided by the Secretary of State.</p>

N.B. This table excludes proposals relating to Trust schools (see chapter 19, Trust schools).

## ESTABLISHING A NEW SCHOOL

### School competitions: primary, secondary and special schools

4. The [Education and Inspections Act 2006](#), which came into force on 25 May 2007, requires a competition to be held where a new primary, secondary or special school is proposed (including a brand new school or replacement school which will replace one or more closing schools). The provisions do not apply to proposals to rebuild an existing school on its current site or transfer it to a new site.
5. Only an LA can organise a competition: there is no provision for proposers other than LAs to hold competitions. The process for establishing a new school by competition involves six statutory stages:
  - consultation – with all interested parties and having regard to the Secretary of State’s guidance;
  - invitation (first notice) – the publication of a notice in a local newspaper and in some other conspicuous place in the area (e.g. library, community centre or post office) inviting proposals to establish the new school;
  - publication of proposals received (second notice) – the publication of a notice in a local newspaper and in some other conspicuous place in the area (e.g. library, community centre or post office) providing details of all the new school proposals received;
  - representations – comments and objections can be made on any of the proposals;
  - decision – the LA will decide competition proposals except where they are either the proposers of a new school or have a role in any Trust that proposes a new school, and in such cases the proposals will be decided by the independent Schools Adjudicator;
  - implementation – of the approved proposals.
6. Where LAs wish to enter their own proposals for a community school in a competition, regulations determine whether they have the power to do so and if they require the Secretary of State’s consent to do so.

### Consent to publish new school proposals without a competition

7. Where an LA or other proposer wishes to establish a new school without a competition, they must apply to the Secretary of State for consent to publish proposals for a new

school, as provided for in [Section 10](#) of the Education and Inspections Act 2006.

8. Where consent is granted, a five-stage statutory process will apply, i.e. consultation, publication, representations, decision and implementation, where approved (see paragraph 11, below).
9. A new Academy can be established without running a school competition and sponsors can work with an LA on plans to establish an Academy and seek a funding agreement with the Secretary of State. However, an Academy bid can also be submitted in a school competition.
10. In the case of a new nursery school or a school solely for pupils aged above compulsory school age, proposals must be published under [Section 11](#) of the Education and Inspections Act. The five-stage statutory process must then be followed (see paragraph 11, below).

### **CLOSING A SCHOOL AND MAKING OTHER CHANGES**

11. For school closures and other alterations to schools (excluding proposals to change category to foundation and/or acquire a Trust/appoint majority of foundation governors), the five-stage statutory process applies as follows:
  - consultation – with all interested parties by those intending to publish the proposal. Proposers must have regard to the Secretary of State’s guidance;
  - publication – in a local newspaper and by posting at the school entrances and in some other conspicuous place in the area, e.g. library, post office;
  - representations – normally six weeks (or four weeks for an “excepted expansion”) during which written comments or objections can be forwarded to the LA;
  - decision – the decision-maker will be the LA. If the LA does not decide the proposals within two months, the proposals must be passed to the Schools Adjudicator for decision. There is a right of appeal in specific circumstances (see details in paragraph 13, below);
  - implementation – of the approved proposals.

### **School closure: voluntary and foundation schools**

12. In addition to the statutory proposal process described above, the governing bodies of a foundation or voluntary school may also close a school by giving two years’ notice. The Secretary of State’s prior consent is required if expenditure has been incurred on the school’s premises by the Secretary of State, the Funding Agency for Schools or the school’s current, or any previous, LA. If the trustees of a foundation or voluntary school wish to give notice to the governing body that they intend to terminate the school’s occupation of the school’s site, and as a result the school can no longer continue, the trustees must also give a minimum of two years’ notice, providing a copy of the notice to the LA and the Secretary of State. Statutory proposals are not required in these cases. The process for both categories of closure is set out in [Section 30](#) of the School Standards and Framework Act 1998.

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### **Right of appeal**

13. There is a right of appeal against an LA decision to the Schools Adjudicator in the following specific circumstances.
  - The local Roman Catholic (RC) or Church of England (C of E) diocesan bodies will be able to appeal against any decision on any school proposals.
  - The LSC will be able to appeal against a decision on proposals that relate to a school providing education for pupils aged 14 or over.
  - The governing body of a community school (other than a grammar school) can appeal against a decision on “excepted expansion” proposals for its school.
  - The governing body and trustees of a foundation or voluntary school can appeal against a decision on any proposals that apply to their school, i.e. school closure or other alteration to school (excluding proposals to change category to foundation

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and/or acquire a Trust, or appoint majority of foundation governors). This right applies irrespective of who published the proposals (i.e. the LA or the governing body).

- In cases of rejection, the proposer of a new school published under [Section 10](#) or [11](#) of the Education and Inspections Act (i.e. where consent to publish has been given by the Secretary of State; or proposals are for special cases under Section 11) can appeal against the rejection.

A request under paragraph 12 must be made within four weeks of the LA's decision. The LA must then submit the proposal and appropriate papers to the Schools Adjudicator within one week of receiving the request.

(Additional guidance on the statutory processes is available at the [DCSF School Organisation website](#).)

## REVOCATION OF PROPOSALS

14. Where statutory proposals are approved, there is a statutory duty to implement them. However, if circumstances change and it is difficult or no longer appropriate to carry out approved proposals, LAs and governing bodies can publish new revocation proposals which, if approved, would remove the duty to carry out the original proposals.

## CHANGE OF CATEGORY

### Streamlined process for changing to foundation category

15. The process for schools to change category to foundation is different from the process for making other changes to schools. The governing body may consult and publish proposals (i.e. as in paragraph 11) but may then decide the proposals. The process is faster than for other alterations, for example comments and objections to the proposals must be sent to the governing body within four weeks of publication of the proposals. The governing body determines the proposals by a majority vote.
16. Voluntary aided or voluntary controlled schools that wish to publish proposals to change category to foundation must have the consent of the trustees of their school's foundation, or the consent of whoever appoints foundation governors.
17. Proposals to change category to foundation may be published together with statutory proposals to acquire a Trust; or to acquire a Trust and allow that Trust to appoint a majority of the governing body (see chapter 19, Trust schools, for more information on Trust schools).
18. Where proposals to change category to foundation are approved by the governing body, there is a statutory duty to implement. However, if circumstances change and the governing body no longer wishes to implement the proposals, the governing body can publish revocation proposals to remove the duty to implement. However, it must notify the local RC and/or C of E diocese, the LSC (where appropriate) and any trustees, of its decision. There is a right of appeal to the Adjudicator by the RC or C of E diocese, or the LSC (where appropriate).

### Standard process for changing a school's category

19. Proposals to change category, other than changing to foundation category, must follow the five-stage process as described in paragraph 11 above.
20. While any voluntary or foundation school may be established with a religious character, it is not possible for any school to gain, lose or change religious character through the change of category process. This could only be effected by closing the school and opening a new school. For example, if a community school wished to become a voluntary school with a religious character, the LA would need to publish proposals to close the community school, and the diocese or faith group (as proposers) would bring forward related proposals to establish the new voluntary school.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor-net.co.uk](http://www.governor-net.co.uk)**

The School Standards and Framework Act 1998: [Sections 30 and 109](#)

The Education and Inspections Act 2006: [Sections 7–32 and Schedules 2 and 3](#)

The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007: [SI 2007/1288](#)

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007: [SI 2007/1289](#)

The School Organisation (Transitional Provisions) (England) Regulations 2007: [SI 2007/1355](#)

The School Organisation and Governance (Amendment ) (England) Regulations 2009

## GUIDANCE

The [DCSF School organisation website](#) contains guidance handbooks on the various changes to school organisation.

# 19 TRUST SCHOOLS

## CHAPTER SUMMARY

The [Education and Inspections Act 2006](#) puts in place the statutory framework for schools to become Trust schools. Trust schools are not a new or different category of school, but are foundation schools supported by a charitable foundation or Trust. The aim is to bring in the experience, energy and expertise from partners to strengthen the leadership and governance of schools, and to raise standards and strengthen collaboration.

This chapter gives a brief description of the statutory processes underpinning Trust schools and the duties and requirements of those Trusts. However, it is not a comprehensive guide. Governors of community and voluntary schools must have regard to the statutory guidance in [Changing School Category to Foundation: A Guide for Governing Bodies](#). Governing bodies must also have regard to the statutory guidance in [Trust School Proposals: A Guide for Local Authorities and Governing Bodies](#).

A toolkit for aspiring Trust schools is produced by the Department for Children, Schools and Families (DCSF) and is available on the [Trust and Foundation Schools Partnership \(TFSP\) website](#).

More recently, a majority Trust model has been adopted as a structural solution for National Challenge schools in order to help them improve their results. Details are available on the [National Challenge website](#).

## WHAT IS A TRUST SCHOOL?

1. A Trust school is defined as a foundation school with a foundation. Foundations are defined in [Section 21 of the School Standards and Framework Act 1998](#). The statutory purpose of a foundation is to hold land on trust for one or more schools. It may also appoint foundation governors to those schools where the school's instrument of government so provides.
2. A Trust school, as a foundation school, will set its own admission arrangements, have control over its land and buildings and employ its own staff.
3. A Trust school operates within the same frameworks as other maintained schools: it will teach the national curriculum, follow the [School Admissions Code](#), employ teaching staff under the terms of the School Teachers' Pay and Conditions Document and be inspected by Ofsted. The Local Authority (LA) will fund the school on the same basis as all other LA schools and will retain its intervention powers if there are problems at the school.
4. There is no single blueprint for how Trust schools work. Trusts can involve one or more partners and can support an individual school or groups of two or more schools. Acquiring a Trust is a way for schools to raise standards through strengthening collaboration and drawing on the expertise and energy of their partners to support their strategic leadership. It is for each school's governing body to decide whether to adopt Trust status and, if they do, to decide who they want to work with – and how – in order to support the school's particular needs and aspirations.
5. The governing body of a Trust school (which retains the stake-holder model involving parents, staff, community and LA governors, as with any other maintained school) remains responsible for all major decisions about the school and its future. However, Trust schools benefit from a long-term relationship with external partners and their involvement in the school's governance and leadership. The skills and experience of Trust-appointed governors will strengthen the whole governing body and make a contribution to the school's ethos.

## ACQUISITION OF A TRUST/ACQUIRING A MAJORITY OF FOUNDATION GOVERNORS

6. The [Education and Inspections Act 2006](#) introduced a statutory process for schools that wish to become Trust schools by acquiring a Trust, and defined particular characteristics required of such Trusts. It also provides that governing bodies, having completed a statutory process, may have an instrument of government that allows for the Trust to appoint a majority of governors to the governing body (otherwise the Trust will appoint a minority of the governing body).
7. Governing bodies of existing foundation schools that wish to acquire a Trust, or provide for their Trust to appoint a majority of the governing body, must follow a statutory process outlined below. The governing bodies of other types of school will also need to publish proposals to change category to foundation (see chapter 18, Organisational changes to the school) but these statutory processes may all be run concurrently. Full guidance on these processes can be found on the [DCSF website](#) and in the Trust schools' toolkit on the [TFSP website](#).
8. Although it is legally possible for any category of school to publish proposals to become a foundation school with a Trust under the 2006 Act, there are practical difficulties in the case of schools which already have a Trust, such as voluntary schools (and some foundation schools). A school may not have more than one Trust, so such a school would have to divest itself of its existing Trust (or the existing Trust would have to re-configure itself to meet the requirements of the Act). The consent of the existing trustees of the school and whoever appoints the foundation governors would need to be secured before the governing body could publish the proposals. In addition, if the existing Trust continued in existence it would probably continue to own the land, and unless it was willing to make this available to the new Trust (and its Trust deed allowed it to do so), it would not be possible for the school to continue on that site.
9. Even if it would not be possible (or desirable) for the existing Trust of a school to acquire a Trust under the 2006 Act, such schools could become involved in the Trusts of other schools if all the parties were in agreement through representation on that Trust.
10. No school can acquire, lose or change its religious character through the acquisition of a Trust or through a change of category. A voluntary school which has a religious character ("faith" schools) would retain this as a Trust school.

### The statutory process

11. The process by which a governing body may acquire a Trust is given below.
- i) The governing body considers the acquisition of a Trust, and/or the acquisition of a foundation majority; initiation of statutory process.
  - ii) The governing body undertakes a period of statutory consultation on the plans.
  - iii) The governing body publishes proposals (having obtained consent where required).
  - iv) Statutory four-week period for representations (including opportunity for the LA to refer proposals to the Schools Adjudicator).
  - v) Proposals are determined by the decision-maker (usually the governing body; the Adjudicator if the LA has referred proposals during the period for representations).
  - vi) Implementation.

### Additional points to note

12. The [School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2007](#) specify both the information to be contained in proposals and the procedures for publishing proposals.
13. The duration of the governing body's consultation is not specified. However, the governing body must comply with the regulations and must have regard to statutory guidance issued by the Secretary of State.



14. The governing bodies of voluntary aided and voluntary controlled schools, where the school already has a foundation, will require the consent of trustees or whoever appoints foundation governors before publishing proposals to change category to foundation. Foundation schools which acquired foundations before 25 May 2007 will require the consent of their existing trustees, or whoever appoints foundation governors, before publishing proposals to allow the Trust (foundation) to appoint a majority of the governing body.
15. LAs may, having regard to statutory guidance issued by the Secretary of State in *Trust School Proposals: A Guide for Local Authorities and Governing Bodies*, refer proposals to acquire a Trust or allow a Trust to appoint a majority of governors to the Schools Adjudicator for decision. Regulations provide that LAs may refer proposals to the Adjudicator if they consider that:
- consultation has been inadequate, i.e. the governing body has failed to meet the requirements set out in the regulations or has failed to have regard to the relevant guidance; or
  - the governing body has failed to have regard to responses to the consultation; or
  - the Trust will have a negative impact on standards.
16. Whether the proposals are determined by the governing body or the Schools Adjudicator, the decision-maker must have regard to the statutory guidance issued by the Secretary of State for Children, Schools and Families contained within the following documents:
- *Changing School Category to Foundation: A Guide for Governing Bodies*;
  - *Trust School Proposals: A Guide for Local Authorities and Governing Bodies*.
17. Governing bodies are under a duty to implement proposals that they have approved, or that have been approved by the Schools Adjudicator (though modifications that do not constitute a significant change may be made). However, if circumstances change and it is difficult, or is no longer appropriate, to carry out approved proposals, governing bodies can publish new proposals which, if approved, would remove the duty to carry out the original proposals.
18. Trust schools which have a majority of governors appointed by the Trust must establish a Parent Council in accordance with the *School Governance (Parent Councils) (England) Regulations 2007*. (See chapter 20, Parent councils.)

## TRUSTS – LEGAL REQUIREMENTS

19. Legislation makes a number of requirements as to the form and function of Trusts and foundations. Trusts must be incorporated either as:
- a company registered under the Companies Act 1985 as a company limited by shares or by guarantee; or
  - a body incorporated by Royal Charter.
20. All Trusts must:
- be charitable;
  - have exclusively charitable objects, including the particular charitable object of advancing the education of all pupils at the school(s) for which the Trust acts as foundation;
  - have aims which are, demonstrably, for the public benefit; and
  - promote community cohesion.
21. Certain categories of persons are disqualified from being trustees under the *School Organisation (Requirements as to Foundations) (England) Regulations*. This includes a person who has not obtained a criminal records certificate under Section 113A of the *Police Act 1997* – this certificate may only be obtained from the Criminal Records Bureau.
22. The Secretary of State for Children, Schools and Families has the power to remove and replace individual trustees in certain prescribed circumstances.

## REMOVAL OF A TRUST/REDUCTION IN THE NUMBER OF FOUNDATION GOVERNORS

23. Though a relationship with a Trust is designed to be lasting, a mechanism exists as a safeguard for the governing body of a school to remove the Trust or to alter the school's instrument of government so that the Trust no longer appoints the majority of governors where they believe this would be in the best interests of the school. This applies only to Trust schools that have been established or have acquired their Trust under the Education and Inspections Act 2006.

### The process

24. The removal of a Trust or reduction in a Trust majority is a statutory process similar to that of Trust acquisition (publication of proposals, representations and decision by the governing body). [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts\) \(England\) Regulations 2007](#) specify both the information to be contained in proposals and the procedures for publishing proposals.
25. Statutory guidance on the removal of a school's Trust and a reduction in the number of governors appointed by the Trust is available from the [DCSF website](#).

### Points to note

26. The governing body may at any time decide to publish proposals to remove the Trust or move to a minority of foundation governors, except in the case of a majority foundation governance model where at least a third of the governors initiate the process. In these circumstances, the governing body must consult in the area before publishing their proposals.
27. In the case of a majority foundation governing body, the governing body is not obliged to publish proposals to remove the Trust or reduce the number of governors appointed by the Trust in response to the request from at least a third of governors:
- at any time within five years beginning with the date of implementation of the most recent proposals for:
    - i. the establishment of the school
    - ii. a change of category to foundation or foundation special school
    - iii. the acquisition of a Trust
    - iv. the acquisition of a majority of governors appointed by the Trust. or
  - at any time within five years after the rejection of proposals, published by the governing body in response to a request by a minority of governors, to remove the Trust or reduce the number of governors appointed by the Trust.
28. There are different arrangements for the decision-making, depending on how the process is triggered.
- If the majority of governors voted to publish proposals, then they may be determined by a majority vote of those governors present and voting.
  - If the governing body was required to publish proposals by a minority (of one-third or more) of the governors, then unless more than two-thirds of the governors vote in favour of retaining the Trust/Trust majority, the proposals will be approved and the Trust/Trust majority will be removed.
29. Proposals to remove the Trust or to reduce the number of foundation governors are always determined by the governing body. There is a period for representations during which any person may object to the proposals (six weeks from the date of their publication). However, unlike the process to acquire a Trust, there is no power of referral to the Schools Adjudicator.
30. When a Trust is removed, the school becomes a foundation school without a foundation.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor-net.co.uk](http://www.governor-net.co.uk)**

The Education and Inspections Act 2006 Sections 18–22; 24–27; 33–34; and Schedule 2

The School Organisation (Establishment and Discontinuance of Maintained Schools) (England) Regulations 2007

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007

The School Organisation (Requirements as to Foundations) (England) Regulations 2007

The School Organisation (Foundation Special Schools) (Application of Provisions Relating to Foundations) (England) Regulations 2007

The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007

The School Governance (Parent Councils) (England) Regulations 2007

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# 20 PARENT COUNCILS

## CHAPTER SUMMARY

This chapter describes the statutory requirements placed on qualifying schools to establish a Parent Council. Qualifying schools are foundation and foundation special schools in England with a foundation established otherwise than under the School Standards and Framework Act 1998, where the instrument of government provides for the majority of the governors on the governing body to be foundation governors. In this guidance, these schools are known as “majority governance Trust schools”.

This chapter also provides general guidance on Parent Councils which will be helpful to other schools. Since May 2007 all schools are under a duty to have regard to the views of parents. All schools are encouraged to review their current arrangements in relation to this duty and to consider enhancing them by setting up a Parent Council.

## STATUTORY BASIS FOR PARENT COUNCILS IN MAJORITY GOVERNANCE TRUST SCHOOLS

1. Section 23A of the Education Act 2002 (as inserted by [Section 34 of the Education and Inspections Act 2006](#)) requires that the governing body of a majority governance Trust school, as defined in the summary above, must establish a Parent Council.
2. The [School Governance \(Parent Council\) \(England\) Regulations 2007](#) set out minimum membership, function and support arrangements for Parent Councils in majority governance Trust schools.

## WHAT MAJORITY GOVERNANCE TRUST SCHOOLS MUST DO

### Membership of the Parent Council

3. The Regulations set out the minimum membership of a Parent Council to be established by a majority governance Trust school. The majority of members of the Council must be parents of registered pupils at the school (parent members). Only parent members can appoint non-parents to the Council, if they feel it appropriate to do so.
4. Those who are not parents of pupils at the school can have a valuable role to play. For example, there may be cases where committed members of a Parent Council wish to continue to serve during a period when they do not have a child in the school, but have other children who would join the school later. Some schools may wish to build on existing arrangements for parental groups such as Parent Teacher Associations, where membership is already wider than parents of current pupils, when setting up their Parent Council.
5. Membership of the Parent Council must include, where possible:
  - the parent or parents of at least one pupil in each year group;
  - at least one parent to represent any pupil or any group of pupils and parents identified by the governing body as requiring special consideration;
  - the parent governor or parent governors, where they are willing to serve.
6. Some small schools or special schools may not always be able to have a parent representing every year group, so the requirement to secure the minimum membership will be to do so as far as is reasonably practicable.
7. It is for the governing body to decide which pupils (or groups of pupils) will require special consideration and whose parents should be represented on its Parent Council. Most

schools will have pupils with special educational needs, and many will have looked-after children or pupils from black and minority ethnic groups, different faiths, refugees or children with English as a second language. Some schools may have traveller children or children from service families or from particular cultural groups whose parents should be represented on the Parent Council.

8. The term “parent” includes any individual who has had parental responsibility for, or cares or has cared for, a child or young person under the age of 18. “Pupil” means a pupil registered at the school.
9. It is for the governing body to decide how parents are appointed or elected to the Parent Council and the term for which they should serve as members.

### **Meetings and proceedings of the Parent Council**

10. In consultation with the governing body, the Parent Council will decide how it will operate. It will agree the place, frequency and proceedings of its meetings, and the quorum for any votes. Although the governing body and the Parent Council can decide the procedures and voting arrangements for co-opting non-parents onto the Council, only the parents of registered pupils may vote.
11. Arrangements for meetings should take account of parents’ preferences, working patterns, availability and circumstances. The governing body will need to make suitable accommodation available for Parent Council meetings. Other options for engaging parents in the Parent Council include the use of online forums, so that attendance in person is not always necessary.
12. The governing body will provide the Parent Council with the information, support and assistance it would reasonably need to carry out its consultative and advisory functions. Although the governing body will assist the Parent Council in arranging its meetings, many Parent Councils will be self-running and informal.

### **Functions of the Parent Council**

13. The governing body is under a duty to consult the Parent Council on matters relating to its conduct of the school and the exercise of its powers under [Section 27 of the Education Act 2002](#). Section 27 gives the governing body of a maintained school the power to provide any facilities or services for any charitable purpose that will benefit the pupils at the school or people who live or work in the local area.
14. It is for the governing body to decide how, when and on which issues to consult the Parent Council, and this will be a matter for the individual school. The governing body must have regard to any advice or views expressed to it by the Parent Council when it is conducting the school or exercising its powers under [Section 27 of the Education Act 2002](#).

### **GENERAL GUIDANCE ON PARENT COUNCILS IN ALL MAINTAINED SCHOOLS**

15. There is no statutory requirement to establish a Parent Council in maintained schools except in “majority governance Trust schools” (as defined in paragraph 1, above). It will be for the governing body of other maintained schools (including foundation schools in which the foundation or Trust appoints a minority of foundation governors) to decide whether to establish a Parent Council and to determine its representation. If it decides to establish a Parent Council, it is free to establish one with whatever membership that it and the Parent Council require.
16. A Parent Council is a body of parents which represents parents and provides a forum for them to put forward their views to the headteacher and the governing body of their children’s school. A Parent Council can be less formal and require a lesser commitment than being a member of the governing body. Being more accessible, a Parent Council enables more parents to contribute to their child’s school.
17. The governing body remains the decision-maker and provides the strategic leadership of

the school. Parent Councils have a consultative and advisory role. They are a means to strengthen the voice of parents, and to enable more parents to express their opinions and influence decisions.

18. A resource pack to help governing bodies and schools to establish a Parent Council is available at [GovernorNet](#).

### **DUTY TO HAVE REGARD TO THE VIEWS OF PARENTS**

19. Section 21(7) of the Education Act 2002 (as inserted by Section 38 of The Education and Inspections Act 2006) places a duty on governing bodies to have regard to any views expressed to them by parents of registered pupils at the school in exercising their functions.
20. There are a number of issues on which governing bodies are already required by law to consult. These are not affected by the new duty to have regard to the views of parents. They generally involve significant changes to the school and include:
- Changing admissions arrangements (where the school is an admissions authority);
  - Expanding the school, changing category, adding a sixth form, ending selection and making changes to the school day;
  - Adding extended services;
  - Creating or joining a federation.
21. When a school is inspected, Ofsted must have regard to any views expressed by parents.
22. The wider duty requires governing bodies to have regard to the views of parents more generally. This might include consulting on key policies, travel to school arrangements, school uniform, the home-school agreement, school meals, the curriculum or pupil behaviour.
23. It will be for individual schools to decide how and when to seek the views of parents but there are important milestones such as the start of primary school, the transfer to secondary school and at the start of each key stage, when parents will wish to be closely involved in their children's education. Governing bodies should have mechanisms in place to enable parents to put forward their views at key points in their children's education.
24. Options to gather parental views which have been successfully used by schools include:
- parent councils
  - regular parental questionnaires and surveys
  - parent workshops/forums or curriculum meetings
  - ICT including school websites and email
  - regular parents' evenings and face-to-face discussions with teaching staff
  - themed parents' evenings with discussions on a whole school issue
  - governors' clinics
  - governors' suggestion boxes
  - termly consultation meetings.
25. Governing bodies should also be aware that many parents will come into schools to access extended services such as childcare, lifelong learning opportunities, healthcare

and social services provision and should take these opportunities to seek their views.

26. Governing bodies should demonstrate in Section 2 of the School Evaluation Form (SEF) the methods they have used to seek the views of parents and how those views have influenced their decision making. They should ensure that views are sought from all categories of parents including those with disabilities, those who may be disengaged and parents of particular groups of pupils who may face significant barriers to their inclusion such as language, literacy or culture. Governing bodies should consider whether any documents should be translated into other languages.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

Section 21(7) of the Education Act 2002 (as inserted by Section 38(1) of the [Education and Inspections Act 2006](#))

Section 23A of the Education Act 2002 (as inserted by [Section 34 of the Education and Inspections Act 2006](#))

[The School Governance \(Parent Council\) \(England\) Regulations 2007: SI 2007/1330](#)

## GUIDANCE

Guidance on Parent Councils is available on the [GovernorNet](#) website.



# 21 CONTROL AND COMMUNITY USE OF SCHOOL PREMISES

## CHAPTER SUMMARY

This chapter explains the governing body's role as controller of the use of premises and the circumstances under which Local Authorities (LAs) can direct the governing body as to how premises should be used. Details are also given about Transfer of Control Agreements (TofCAs) and how the governing body must comply with minimum standards for school premises and adhere to special educational needs (SEN) and disability discrimination legislation.

## USE OF PREMISES

1. At all maintained schools the governing body controls the use of premises both during and outside school hours. There may be exceptions to this at voluntary aided, voluntary controlled and foundation or foundation special schools if a trust deed says that someone else has control of the use of premises. Also, at community, community special and voluntary controlled schools the governing body has to follow any general rules (directions) set by the LA (see paragraph 5, below). Further exceptions occur with all schools where a TofCA has been made (see paragraph 22, below). Governing bodies must be sympathetic to the needs of the local community when deciding out-of-hours use.
2. Candidates in parliamentary and local elections have rights to use school rooms for public meetings when they are not being used for educational purposes, or if the premises are not under a lettings agreement. The Returning Officer (the person responsible for organising the election) may use school rooms at any time for an election. The Returning Officer does not have to pay rent but must repay any costs arising. Equivalent rights of access also apply regarding referendums.
3. All schools accommodate extended school and community services to some degree, such as after-school clubs, adult education, out-of-school childcare, sport and youth clubs, and so on. Some schools offer facilities to voluntary organisations.
4. Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. While there is no statutory definition of the term, and so ultimately its meaning is for the courts to determine, the Government's view is that the term "purposes of the school" could be construed as embracing all activities that bring an educational benefit to pupils at the school, or to pupils registered at other maintained schools. Governing bodies may charge some organisations more so that the extra funds can be used to subsidise other users. Overall community use must at least cover its own costs. Profits raised through community use of schools belong to the LA on whose land the profits were made, but LAs may allow schools to keep the income that they generate. Indeed LAs are encouraged to make provisions for this in their Local Management of Schools schemes. For more information, refer to *Planning and Funding Extended Schools: A Guide for Schools, Local Authorities and their Partner Organisations*.
5. The LA can give the governing bodies of community, community special and voluntary controlled schools directions as to how school premises should be used. These directions do not take away the governing body's responsibility, but they can cover matters such as:
  - regular bookings for the youth service or for adult education;
  - security and caretaking;
  - what costs should be covered by charges;
  - the use of a central booking system;
  - making sure that community use of the school's facilities does not affect the day-to-day use of the facilities by pupils, for example by making sure that outdoor sports pitches are not overused.

6. The LA may give a direction to the governing body of a voluntary aided school as to how the premises should be used on weekdays, for up to three days a week. The LA may do this where it wishes to provide accommodation for the education or welfare of young people, if the LA is satisfied that there is no other suitable accommodation available. When making such a direction, the LA may direct the governing body to provide the accommodation free of charge.
7. Directions given by LAs should be reasonable and not interfere too much with the governing body's control. For example, the LA should not demand that the premises be made available to it if this would force the governing body to break booking agreements.

### **Standards for school premises**

8. Governing bodies should note that minimum standards for the premises of all maintained schools in England and Wales are contained in the [Education \(School Premises\) Regulations 1999](#). These cover school facilities, structural and environmental requirements, aspects of health and safety, and the provision of team-game playing fields.

### **Making premises suitable for disabled pupils and those with special educational needs (SEN), and avoiding discrimination**

9. The [Disability Discrimination Act 1995](#) (DDA) has applied to schools since 1996, in respect of [Part 2](#), Employment, and [Part 3](#), Provision of Goods and Services (which had exemptions for education). The [Special Educational Needs and Disability Act 2001](#) amends the DDA, lifting the exemption for education from [Part 3](#), and provides [Part 4](#), Education, including schools from September 2002. The DDA 1995 made it unlawful for any organisation or person that provides a service to discriminate against disabled people.
10. The [Special Educational Needs and Disability Act 2001](#) ("the Act") introduced new duties on LAs and schools in relation to disabled pupils and prospective pupils. A person has a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. The two tracts of discrimination are not to treat disabled pupils less favourably and to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage.
11. LAs and schools are required to prepare accessibility strategies and accessibility plans respectively for increasing, over time, the accessibility of schools for disabled pupils. This is known as the planning duty.
12. The objectives of the accessibility strategy or plan are to:
- increase the extent to which disabled pupils can participate in the school curriculum;
  - improve the physical environment of schools to increase the extent to which disabled pupils can take advantage of education and associated services;
  - improve the delivery to disabled pupils of information, which pupils who are not disabled receive in written form (this should be done within a reasonable period of time and in formats that take account of views expressed by the pupils or parents about their preferred means of communication).
13. The Act provides for Ofsted inspections of LAs and schools to cover the discharge of their responsibilities to prepare, revise, review and implement their strategies or plans, and in respect of an accessibility plan, the publication of the plan. Ofsted monitors the planning duty through its inspections of LAs and schools. The Secretary of State for Children, Schools and Families can intervene where an LA or school is not complying with the planning duty and can direct an LA or school to do so.
14. The planning duty came into force on 1 September 2002. LAs and schools were required to have their written strategies and plans in place by 1 April 2003. These Regulations ensured that strategies and plans ran for an initial three-year period, from 1 April 2003 to 31 March 2006. These were then reviewed and amendments made where necessary.

The same process is followed at the end of each three-year cycle.

15. **Part 3** of the DDA (Goods, facilities and services) applies to the governing body where, as service provider, it makes the school sports facilities, the school hall or other school accommodation available for use by members of the public or a section of the public. Providers of services must not refuse to provide a service to disabled people, provide it at a lower standard, or offer the service on less favourable terms to disabled people.
16. A person discriminates against a disabled person if, for a reason which relates to a disabled person's disability, they treat him or her less favourably than they treat or would treat others to whom that reason does not or would not apply, and they cannot show that the treatment in question is justified. Any less favourable treatment for a disability-related reason is justified only where, in the landlord's or manager's opinion, one or more "conditions" are satisfied and it is reasonable, given all the circumstance of the case, for him or her to hold that opinion.
17. The conditions specified in the DDA relate to:
  - health or safety (including that of the disabled person);
  - the disabled person being incapable of entering into a contract;
  - the service provider being otherwise unable to provide the service to the public (Section 19(1)(a));
  - enabling the service provider to provide the service to the disabled person or other members of the public (Section 19(1)(c) or (d));
  - the greater cost of providing a tailor-made service (Section 19(1)(d)).
18. Since 1 October 1999 providers of services have had to make "reasonable adjustments" for disabled people, such as providing extra help or making changes to the way they provide their services.
19. Since 1 October 2004 service providers have had to make other reasonable adjustments in relation to the physical features of their premises to overcome physical barriers that make it impossible or unreasonably difficult for a disabled person to access their services. However, the DDA recognises the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, service providers are required only to make adjustments that are reasonable given all the circumstances.
20. Factors that may be taken into account in determining what may be reasonable include the cost of the adjustment, its practicability and the extent of the service provider's financial and other resources.
21. Governing bodies, as providers of services, are also subject to Section 20 of the Race Relations Act 1976 and Section 29 of the Sex Discrimination Act 1975.

### **TRANSFER OF CONTROL AGREEMENTS**

22. Governing bodies can enter into a ToFCA in order to share control of the school premises with another body, or transfer control to it. The other body, known as the "controlling body", will continue the occupation and use of the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can enable school facilities to be used without needing ongoing management or administrative time from the school staff. The governing body of a community school must obtain the LA's consent before entering into a ToFCA that transfers control during school hours.

### **THE LAW**

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The Representation of the People Act 1983 (as amended): Sections 95 and 96 and Schedules 1 and 5

The Disability Discrimination Act 1995: Part 3: Discrimination in other areas: Goods, facilities and services

The School Standards and Framework Act 1998: Section 40 and Schedule 13

N.B. these remain in force until Section 31 of the Education Act 2002 becomes active. This change is not scheduled to take place for the time being.

## **GUIDANCE**

Accessible Schools (Guidance) Planning to increase access to schools for disabled pupils  
Ref: LEA/0168/2002 Issue 8/7/02 available at [www.dfes.gov.uk/sen](http://www.dfes.gov.uk/sen) and DfEE Building Bulletin 91: Access for Disabled People to School Buildings

Standards for School Premises provides guidance on the Education (School Premises) Regulations 1999: SI 1999/2

DfEE Circular 3/97: What the Disability Discrimination Act 1995 (DDA) means for schools and LEAs

Disability Discrimination Act 1995: Code of Practice (Goods, Facilities, Services and Premises) (Appointed Day) Order 2002: SI 2002/720

Disability Rights Commission: Code of Practice for Schools

Education Extra's Good Practice Guide – Successful Education Based Partnerships (DfEE); Extended Schools: Access to opportunities and services for all (DfES 2002)

Planning and Funding Extended Schools: A Guide for Schools, Local Authorities and their Partner Organisations

Lottery Funding Hotline: 0845 275 0000

# 22 EXTENDED SCHOOLS

## CHAPTER SUMMARY

This chapter explains the governing body's role in securing access for pupils to extended services and making decisions on the form that these services should take. The governing body must:

- ensure that extended services benefit the public and any profits made are reinvested in the service or in the school;
- ensure that extended services help to promote high standards of education;
- consult with the Local Authority (LA), school staff, parents of its school's registered pupils, registered pupils themselves and any other persons that the governing body considers appropriate;
- have regard to any advice given to it by the LA and to guidance that has been issued by the Department for Children, Schools and Families (DCSF);
- ensure that childcare for children under the age of three provided directly by the school is registered with Ofsted .

## GOVERNING BODIES' POWERS AND DUTIES

### The "Charitable purpose" requirement

1. The governing body has the power to provide, or enter into contracts to provide, any facilities or services that will further any "charitable purpose" for the benefit of pupils at its school, families of pupils and people who live and work in the local community. This power is in addition to governing bodies' pre-existing powers and responsibilities regarding the control and community use of school premises (see chapter 21, Control and community use of school premises).
2. The phrase "charitable purpose" has a particular legal meaning that does not coincide with its popular meaning. To be "charitable" in this sense, the activity must benefit the public or a section of it and either:
  - relieve poverty;
  - advance education;
  - advance religion; or
  - be for another purpose that the law recognises as charitable.

Most services and activities that schools want to provide, for example childcare, adult and family learning, co-located health and social services, parenting support and other facilities of benefit to the local community, such as credit unions or information and communication technology (ICT) access, are charitable in this sense. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

3. To further such activities a governing body may incur expenditure, provide services, commission others to provide services, enter into legal agreements and charge for services or facilities subject to certain limitations.

### Restrictions on extended services

4. A governing body cannot engage in any activity that might interfere with its duty to conduct the school with a view to promoting high standards of educational achievement at the school. The governing body's use of the power is also subject to any limits or restrictions contained in the school's instrument of government or in its trust deed (if it has one) and to any local directions issued by the LA regarding the control of school premises.
5. Before implementing any plans to provide facilities or services using the power, the governing body must consult the LA, school staff, parents of its registered pupils,

registered pupils themselves (where this is appropriate) and any other persons that the governing body considers appropriate. The governing body must also have regard to any advice given to it by the LA and to guidance that has been issued by the DCSF.

6. There is a wide range of guidance available on the provision of services, as detailed at the end of this chapter. This guidance provides advice on a number of practical issues such as:
- partnership working and relationships with other agencies
  - access to funding sources
  - governance arrangements
  - finance
  - staffing
  - health and safety
  - security
  - premises and related issues.

Separate but connected guidance on developing childcare provision in schools is available. Further information on a series of topics relating to extended schools, including a guide on governors' roles and governance, is available on the [TeacherNet website](#).

### OFSTED REGISTRATION AND INSPECTION FOR CHILDCARE FACILITIES

7. From September 2008, childcare that is not provided directly by a school was required to be registered by Ofsted under the [Childcare Act 2006](#). Childcare provided by the school for children from birth to age 3 must be registered by Ofsted on the Early Years Register. However, childcare provided by the school for children over three will not be required to be separately registered. Childcare that is provided directly by a school means childcare that is provided by the school's governing body, on or off the school site, where at least one pupil of the school attends. School childcare will still be expected to meet the requirements of registration and will be inspected through the whole-school inspection system. Parents will still be able to use tax credit and employer-supported childcare vouchers for that childcare.
8. Since April 2007 childcare that is not required to be registered by Ofsted can be registered on the voluntary part of the Ofsted Childcare Register, under the [Childcare Act 2006](#). Care that is not currently required to be registered is care that is activity-based, provided in the child's own home, for example nannies, or for children aged eight and over. Where a school engages childcare providers who are not required to be registered by Ofsted, it is advised only to work with providers who are registered on the voluntary part of the Ofsted Childcare Register.

### SURE START CHILDREN'S CENTRES

9. Throughout the country there are growing numbers of Sure Start Children's Centres, providing integrated services to the families of children up to the age of five. Increasing numbers of these centres will be co-located with schools, but there may be differing types of relationships between the school and Children's Centre. These give rise to challenges as to how these services are governed. There are a number of different models that schools may wish to adopt, depending on the circumstances.
- The Children's Centre advisory board may be completely separate from the school governing body.
  - The governing body may take on the role of the Children's Centre advisory board.
  - The governing body may run the Children's Centre through its extended services powers under the [Education Act 2002](#) and have a Children's Centre advisory sub-committee.
  - The governing body may form a joint committee with the governing bodies of other schools and have a joint advisory board.

More details are available in the guidance on governance of Sure Start Children's Centres

and extended schools.

### THE DISABILITY DISCRIMINATION ACT 1995 AND EXTENDED SERVICES

10. In the *Disability Discrimination Act 1995* (DDA), schools have duties under **Part 2** as employers, under **Part 3** as service providers (and in due course, as public authorities) and under **Part 4** as education providers. When governors of extended schools provide extended services, they will need to be clear as to which part of the Act is engaged and impacts upon their functions and responsibilities towards disabled pupils, users of these services or employees. It is possible that governors' responsibilities might change according to the service being delivered, and why and to whom it is being delivered.
11. When services are provided by a third party on schools' premises, either independently of the school or on behalf of the school, governors will need to establish who will be regarded under the DDA as the service provider with the responsibility to make "reasonable adjustments" and/or access improvements. This will ensure that disabled people are not unjustifiably discriminated against in their access to the service. This is a complex area of the law and governors might find it prudent to obtain expert advice.

### THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 2002: Sections 27 and 28, Schedule 1, Paragraph 3(1), and Schedule 3, Paragraphs 2–5

The Childcare Act 2006

### GUIDANCE

[An Introduction to Extended Schools: Providing Opportunities and Services for All](#)

[Extended Schools: Access to Opportunities and Services for All – A Prospectus](#)

[Planning and Funding Extended Schools: A Guide for Schools, Local Authorities and their Partner Organisations](#)

[Governance Guidance for Sure Start Children's Centres and Extended Schools](#)

[Childcare in Extended Schools: Providing Opportunities and Services for All](#)

[Governors' Roles and Governance, know how leaflet](#)

Further information and leaflets are available at [Extended schools practical know how](#), on the TeacherNet website.

[Implementing the Disability Discrimination Act in Schools and Early Years Settings: A Training Resource for Schools and Local Authorities \(DCSF guidance\)](#)

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# 23 CHARGING FOR SCHOOL ACTIVITIES

## CHAPTER SUMMARY

This chapter explains the legislation governing the charging for school activities as set out in the [Education Act 1996: Sections 449–462](#). It covers what a governing body may and may not charge for when activities take place either during or outside of school hours, including residential activities. The need to have charging and remissions policies, and requests for voluntary contributions, is also discussed.

### EDUCATION DURING SCHOOL HOURS

1. No charge can be made for admitting pupils to maintained schools. Education provided during school hours must be free. This includes materials and equipment, and transport provided in school hours by the Local Authority (LA) or by the school to carry pupils between the school and an activity. “School hours” are those when the school is actually in session and do not include the break in the middle of the school day. It is good practice for schools to make this information available to parents and others.
2. All three and four year olds are entitled to 12.5 hours (rising to 15 hours in September 2010) of free early-years provision per week, for 38 weeks per year. A school’s governing body can also provide community services and facilities on the school’s premises (guidance is available in the [extended schools area of the TeacherNet website](#)) and set up a company in accordance with the powers for governing bodies set out in [Section 27 of the Education Act 2002](#).

### EDUCATION PARTLY DURING SCHOOL HOURS

3. Sometimes an activity may happen partly during and partly outside school hours. If most of the time spent on a non-residential activity occurs during school hours, that activity counts as taking place entirely in school hours and no charge may be made. (Time spent on travel only counts as being during school hours if the travel takes place during school hours).
4. As an example, a long-distance trip might involve much travel before and after normal school hours, but if the time spent at the destination fell mainly within school hours, the trip would count as happening in school time and be free of charge. By contrast, a trip that involved leaving school an hour or so earlier than usual in the afternoon, but then went on until quite late in the evening, would be classified as taking place outside school time. Charges would then be allowed.

### EDUCATION OUTSIDE SCHOOL HOURS

5. Parents can only be charged for activities that happen outside school hours when these activities are not a necessary part of the national curriculum or do not form part of the school’s basic curriculum for religious education. In addition, no charge can be made for activities that are an essential part of the syllabus for an approved examination (see paragraph 11 on Public examinations).
6. Charges may be made for other activities that happen outside school hours if parents agree to pay. The [Education Act 1996](#) describes activities that can be charged for as “optional extras”. It is up to the LA or governing body providing the activities to decide whether to make a charge.

### RESIDENTIAL ACTIVITIES

7. Special rules apply for residential activities. A trip counts as falling within school time if the number of school sessions missed by the pupils amounts to half or more of the number of half-days taken up by the activity. Each school day is normally divided into two sessions

and each 24-hour period is divided into two half-days beginning at noon and at midnight.

8. On this basis, a term-time trip from noon on Wednesday to 9.00p.m. on Sunday would last for nine half-days, include five school sessions and would count as taking place in school time. A trip from noon on Thursday to 9.00p.m. on Sunday would count as seven half-days, include three school sessions and would be classified for charging as taking place outside school time. If 50 per cent or more of a half-day is spent on a residential trip, the whole of that half-day should be treated as spent on the trip.
9. If a residential activity takes place largely during school time, meets the requirements of the syllabus for a public examination, or is to do with the national curriculum or religious education, no charge may be made either for the education or for the cost of travel. However, charges can be made for board and lodging in these circumstances, except for pupils whose parents are receiving:
  - Income Support;
  - Income-based Jobseeker's Allowance;
  - support under [Part 6 of the Immigration and Asylum Act 1999](#);
  - Child Tax Credit (providing that they are not entitled to Working Tax Credit and have an annual income, assessed by Her Majesty's Revenue & Customs, that does not exceed £15,575 for the year 2008–09);
  - the guaranteed element of State Pension Credit; and
  - an income-related employment and support allowance (this benefit was introduced on 27 October 2008).

The headteacher should advise all parents of the right to claim free activities if they are receiving these benefits.

### MUSICAL INSTRUMENT TUITION

10. There is an exception to the rule about not charging for activities in school hours. [The Education and Inspections Act 2006](#) introduced a regulation-making power which allowed the Department for Children, Schools and Families (DCSF) to specify circumstances where charges can be made for music tuition. The new regulations, which came into force in September 2007, provide pupils with greater access to vocal and instrumental tuition. Charges may now be made for teaching either an individual pupil or groups of any appropriate size (provided that the size of the group is based on sound pedagogical principles) to play a musical instrument or to sing. [Guidance about the charging regulations](#) can be found on TeacherNet. Charges may only be made if the teaching is not an essential part of either the national curriculum or a public examination syllabus being followed by the pupil(s), or the first access to the Key Stage 2 Instrumental and Vocal Tuition Programme (Wider Opportunities).

### PUBLIC EXAMINATIONS

11. No charges may be made for entering pupils for public examinations that are set out in the Regulations. The governing body must enter a pupil for each examination in a public examination syllabus for which the school has prepared the pupil. This does not apply if the governing body thinks there are educational reasons for not entering the pupil, or if the pupil's parents request in writing that the pupil should not be entered. The LA may not override the governing body's decision on whether to enter a particular pupil for an examination.

An examination entry fee may be charged to parents if:

- the examination is on the set list, but the pupil was not prepared for it at the school;
- the exam is not on the set list, but the school arranges for the pupil to take it;
- a pupil fails, without good reason, to complete the requirements of any public examination where the governing body or LA originally paid or agreed to pay the entry fee.

12. Charges may not be made for any cost associated with preparing a pupil for an examination. However, charging is allowed for tuition and other costs if a pupil is prepared outside school hours for an examination that is not set out in the Regulations.

### ACTIVITIES NOT RUN BY THE SCHOOL OR LA

13. When an organisation acting independently of a school or LA arranges an activity to take place during school hours and parents want their children to join the activity, such organisations may charge parents. Parents must then ask the school to agree to their children being absent, just as they would if they wanted to take their children out of school for a family holiday. However, where an activity is organised by a third party and is approved by the school, is educational or is supervised by someone authorised by the school, then it is the DCSF's view that it should be treated as if it were provided by the school and no charge should be made to the parents or pupils. Such an activity, if it takes place outside the school premises, is an "approved educational activity" within the meaning of [Regulation 4A\(a\) of the Education \(Pupil Registration\) Regulations 1995](#) (as amended).

### VOLUNTARY CONTRIBUTIONS

14. Although schools cannot charge for school-time activities, they may still invite parents and others to make voluntary contributions (in cash or in kind) to make school funds go further. All requests to parents for voluntary contributions must make it quite clear that the contributions would be voluntary. Governing bodies should also make it clear that children of parents who do not contribute will not be treated any differently. If a particular activity cannot take place without some help from parents this should be explained to them at the planning stage.
15. Where there are not enough voluntary contributions to make the activity possible and there is no way to make up the shortfall, the activity must be cancelled. The essential point is that no pupil may be left out of an activity because his or her parents cannot, or will not, make a contribution of any kind. The school must first decide which class, or group of pupils, will benefit from the activity and then look for voluntary contributions, either for that activity, or by general fund-raising.

### CHARGING POLICIES

16. The LA or governing body may not charge for anything unless it has drawn up a statement of general policy on charging. The governing body's policy may be more or less generous than the LA's, as long as it meets the requirements of the law. A policy statement will take account of each type of activity that can be charged for and explain when charges will be made. If a charge is to be made for a particular type of activity, for example optional extras, parents need to know how the charge will be worked out and who might qualify for help with the cost (or even get it free). This information should be made available to parents.
17. If a charge is made for each pupil it should not exceed the actual cost. If further funds need to be raised, for example to help in hardship cases, this must be by voluntary contributions or general fund-raising.
18. The permitted charge may include an allowance for the costs of teachers from the school who supervise the activity, but only if those teachers have been given a separate contract to provide the optional extra. A contract need not be a formal document. It could be a simple letter to a teacher asking him or her to provide a service on a particular occasion. Further information about contributions to school funds and school visits is available from the School Admissions Code which can be downloaded from the [School Admissions website](#) Guidance is also available on [www.teachernet.gov.uk](http://www.teachernet.gov.uk).

### SCHOOL MINIBUSES

19. Only the school's pupils, staff or parents may travel for a charge in a school's minibus.

## 23. CHARGING FOR SCHOOL ACTIVITIES

20. Schools may charge for transport in their minibuses only if they hold a permit issued under [Section 19 of the Transport Act 1985](#). In some cases, the permit exempts the school from Public Service Vehicle (PSV) operator and driver licensing requirements. A permit is not required if no charge is made in cash or kind. Schools should apply to their LA for a permit for each minibus.
21. Any charges made may be used to recover some or all of the costs of running the vehicle, including loss of value. But the service may not make a profit, either directly through the fares charged or incidentally as part of a profit-making activity, even if any profit would go into the school's other running costs or for charitable purposes. A charge is any payment made in cash or kind (for example, a club subscription) by or on behalf of a person that gives him or her a right to be carried.
22. Further information is available from LAs or the regional Traffic Commissioners. Addresses may be found in the phone book or at the Vehicle and Operator Services Agency (VOSA) website, [www.vosa.gov.uk](http://www.vosa.gov.uk)

### THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governor.net.co.uk](http://www.governor.net.co.uk)**

The Education Act 1996: [Sections 402, 449–462](#)

The Education (Prescribed Public Examinations) Regulations 1989: [SI 1989/377](#)

The Education (Residential Trips) (Prescribed Tax Credits) (England) Regulations 2003: [SI 2003/381](#)

The Education (Pupil Registration) Regulations 1995: [SI 1995/2089](#) (as amended by the Education (Pupil Registration) (Amendment) Regulations 1997: [SI 1997/2624](#), and by the Education (Pupil Registration) (Amendment) (England) Regulations 2001: [SI 2001/2802](#))

### GUIDANCE

[Passenger Transport Provided by Voluntary Groups](#) (Department of Transport) PSV 385 (available free from regional Traffic Commissioners, whose addresses may be found in the phone book or at [www.vosa.gov.uk](http://www.vosa.gov.uk))

The School Admissions Code (which can be viewed at [www.dcsf.gov.uk/sacode](http://www.dcsf.gov.uk/sacode))

# 24 SCHOOL COMPANIES

## CHAPTER SUMMARY

This chapter gives details of how, in certain circumstances, governing bodies of maintained schools can form a school company with other governing bodies and/or parties. It explains the roles and responsibilities of governing bodies and how schools can benefit through collective purchasing and facilitating services, and how profits are reinvested.

1. Sections 11 and 12 of the Education Act 2002 enable the governing bodies of maintained schools to join with other governing bodies and/or other parties to form companies to undertake certain specified activities. Doing so enables schools to purchase goods and services collectively, provide services or facilities to other schools, or exercise functions which a Local Authority (LA) is able to contract out. The Act also gives governing bodies the power to invest in such companies.
2. These powers are optional. Schools may use the power to form a school company if they feel that a joint identity with other schools will facilitate collective activity.
3. The corporate identity enables schools to enter contracts as a group and to pool resources effectively. Schools are able to follow a well-established procedure for forming a company and have considerable flexibility in how the company is run.
4. The governing body remains responsible for the running of the school: a school and a company remain separate entities, so if the company gets into financial trouble, there will be no risk to the school's assets or the employment of its staff. Teachers will not be expected to transfer to the company.
5. Governing bodies will need the consent of their LAs to join, but this can only be refused where there is good reason. Each company will have a supervising authority (an LA) to ensure that the company is run on a sound financial footing. This is intended to provide a protective framework for companies to operate within, but the supervising authority will not intervene in the day-to-day running of the company.
6. Collective purchasing is intended to help schools save money through economies of scale. Schools would also benefit by sharing the labour burden of purchasing between members. School companies are free to seek professional support and advice.
7. Through a company, schools with particular strengths and capacity can share their experiences and expertise with other schools, and staff can benefit from the development opportunities gained by supporting other schools.
8. School companies can make a profit. The articles of the company will state that profits must be used for the benefit of its members and/or to further the aims of the company.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, please refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The School Companies Regulations 2002: SI 2002/2978

The School Companies (Private Finance Initiative Companies) Regulations 2002: SI 2002/3177, for companies where the purpose is to enter into or facilitate private finance initiative (PFI) agreements.

## GUIDANCE

Regulations and guidance on school companies are available on the [TeacherNet](#) website.

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# 25 PROVIDING INFORMATION

## CHAPTER SUMMARY

This chapter details the roles and responsibilities of governing bodies, headteachers, Local Authorities (LAs) and other educational establishments in providing information to each other, parents and the Secretary of State for Children, Schools and Families. The main types of information covered include careers guidance, arrangements for pupils with special educational needs (SEN), Children and Young People's Plans (CYPP), the school prospectus, the School Profile, the Governors' Annual Report to Parents, home-school agreements, pupils' educational records, and pupil reports. Guidance is also provided for governors on the [Freedom of Information Act](#) and sets out their responsibilities under the Act.

### GENERAL

1. School governors will receive information from the LA, the headteacher and the Department for Children, Schools and Families (DCSF). Some of this will be background information that they receive when they first join the governing body. Other material will be sent to the whole governing body from time to time to help it carry out its duties.
2. The governing body must provide certain information: some to parents or pupils, some to the LA, some to the headteacher and some to the DCSF and other government bodies such as Ofsted.
3. Schools should notify themselves as data controllers under the [Data Protection Act 1998](#) (DPA), unless certain exemptions apply. Advice on this subject can be obtained from the [Information Commissioner's Office](#) (ICO).
4. Any reference to parents in this chapter routinely takes in all adults with parental responsibility; and acknowledges the rights, duties, powers, responsibilities and authority that parents have by law (as defined in the glossary of this chapter at Annex 1).

### INFORMATION SUPPLIED BY THE LOCAL AUTHORITY

5. When a governor is appointed, he or she should receive background information from the LA. This should include a copy of the instrument of government for the school, which sets out the composition of the governing body.
6. The LA supplies the governing body and the headteacher with financial information concerning the school.

### INFORMATION FROM THE GOVERNING BODY TO THE LA

7. The governing body must give the LA any relevant information or reports in connection with the discharge of the governing body's functions that the LA may require.
8. The governing body must make available to the LA details of the arrangements made for pupils with special educational needs (SEN). Governing bodies of community and foundation special schools must provide certain information to parents of pupils or prospective pupils, to LAs and to primary care trusts, including:
  - basic information about the school's SEN provision;
  - information about the school's policies for the assessment and provision for all pupils with SEN;
  - information about the school's staffing policies and partnership with bodies beyond the school.
9. Full details about the information to be published are contained in the [Education \(Special Educational Needs\) \(Information\) \(England\) Regulations 1999](#). These Regulations are contained in the [Code of Practice on Identifying and Assessing Special Educational Needs](#).

10. The governing body must publish the information in a single document and make copies available free of charge to parents, the LA and the primary care trust. The LA may publish the information referred to above if the governing body agrees. Where there is such an agreement, the governing body must supply the LA with the information, which must be published without alteration.

### **Children and Young People's Plan**

11. The Children and Young People's Plan (CYPP) is a single, strategic, overarching plan for all services which affect children and young people in an area. It is a local authority plan led by the Director of Children's Services but developed with the active involvement of other partners on the Children's Trust board or governing body, who should set the strategic vision and jointly develop the plan with partners and stakeholders.
12. The CYPP defines local priorities for LAs and partners, including schools, within the framework of Local Area Agreements and describes the improvements to well-being that will be made for children and young people in a local area and how and when these improvements will be made. Every plan should set out the improvements with reference to the integration of services, early intervention and prevention and safeguarding.
13. LAs have a duty to consult schools, school forums and school admission forums during the preparation of the CYPP. This is to ensure that schools and forums work in partnership within the Children's Trust and have the opportunity to comment on the plan, understand local priorities and targets for improving outcomes for children and young people, and understand how they are expected to help meet these priorities and targets. See the [Children and Young People's Plan \(England\) \(Amendment\) Regulations 2007](#).
14. Maintained schools have a duty to have regard to the CYPP when undertaking duties to promote well-being, community cohesion and high standards of educational achievement. This is to ensure that schools recognise their role in the preparation and delivery of the CYPP. See [Section 21 of the Education Act 2002](#) (as amended by [Section 38\(1\) of the Education and Inspections Act 2006](#)).
15. The duty to have regard to the CYPP means that schools need to take account of the plan when, for example, undertaking their own strategic planning. The CYPP is part of the core data for self-evaluation and School Improvement Partners (SIPs). Linking with the CYPP will help schools identify and demonstrate how they can deliver the five Every Child Matters (ECM) outcomes: being healthy; staying safe; enjoying and achieving; making a positive contribution; and achieving well-being.
16. The duty to have regard to the CYPP is applied to Academies through their funding agreement with the Secretary of State. It also applies to the provision of community (extended) services. Trust schools count as maintained schools for the purpose of this duty.

### **Setting targets**

17. Under the [Education Act 2005](#), LAs set statutory targets once all primary and secondary schools have reported on their targets. As part of the target-setting exercise, LAs will provide support and advice to governors and headteachers to help their schools set realistic, child-based targets, making effective use of the data available to them. Details of the statutory targets the LA has set for pupils' achievement should be included in the CYPP.
18. Schools should set targets which they believe in and can genuinely work towards – this is the principle behind school-initiated target-setting. Schools should discuss their “bottom-up” targets with their SIP or LA adviser, whose role is to challenge (using conversion and comparative data) where expectations for individual pupils or groups of pupils are too low compared with other schools, and to ensure that support is provided to help the school achieve improved outcomes. Targets do not have to match a particular formula for improvement, but schools should be able to demonstrate that their targets seek to maximise all children's progress so that all children achieving national expectations at the



end of one key stage will move on to achieve at least national expectations by the end of the next key stage. Pupils with severe learning difficulties should have targets which seek the best possible ambition for them.

19. Where a school proposes to set targets below the LA's expectations for its pupils, SIPs/link advisers will discuss the support that might be available (from the LA, National Strategies or others) to help the school to raise attainment further. If the school continues to believe it cannot raise standards further, the Head of School Improvement and Director of Children's Services may need to review the targets set and determine how best to support the school. This could include providing support from other agencies via the LA's ECM strategy.

Further information on setting targets, including case studies, is available on the DCSF's [target-setting website](#).

## INFORMATION FROM THE GOVERNING BODY TO PARENTS

### School prospectus

20. Each year the governing body of all maintained schools except maintained nursery schools must publish a school prospectus for parents and prospective parents. As outlined in the [Education \(School Information\) \(England\) Regulations 2002](#), school prospectuses should provide parents with the information about the school's SEN and disability arrangements that was previously required in the Governors' Annual Report to Parents. Other content is for the school to decide upon. In doing so, it will want to consider what information will best serve parents in their decision-making. If necessary, consideration should be given to translating the prospectus into languages other than English, or producing it in alternative formats such as Braille or audio tape.
21. The obligatory content of the prospectus includes:
- arrangements for the admission of pupils with disabilities;
  - details of steps to prevent disabled pupils being treated less favourably than other pupils;
  - details of existing facilities to assist access to the school by pupils with disabilities;
  - the accessibility plan (required under the [Disability Discrimination Act 1995](#)) covering future policies for increasing access to the school by pupils with disabilities;
  - information about the implementation of the governing body's policy on pupils with SEN and any changes to the policy during the last year.
22. The prospectus must be published during the school year immediately preceding the admissions school year, i.e. prospectuses published in 2008–09 will be for admissions in 2009–10. The prospectus must be published at least six weeks before the final date by which parents are asked to apply for admission to the school or to express a preference for a place.

### School Profile

23. Following the passage of the Education Act 2005, governing bodies of maintained schools, except maintained nursery schools, are required to complete a School Profile. Completion of the Profile is a statutory requirement for all schools. This is an online system and the data for each school is provided by the DCSF.
24. The Profile and the school prospectus outline the minimum interaction that schools should have with parents. Schools are free to communicate and interact with parents above and beyond this requirement in any way they wish.
25. The School Profile has three elements:
- performance data supplied by the DCSF
  - a summary of the latest Ofsted report
  - narrative sections written by the school.

26. The narrative sections for the school to complete include the following headings.

- What have been our successes this year?
- What are we trying to improve?
- How have our results changed over time?
- How are we making sure that every child gets teaching to meet their individual needs?
- How do we make sure our pupils are healthy, safe and well supported?
- What have we done in response to Ofsted?
- How are we working with parents and the community?

The narrative sections are all the same size, allowing schools to enter approximately 200 words in each section.

27. Validated performance data will be entered onto School Profile templates as soon as these are available, usually at the start of the spring term. However, schools are now also able to enter their own provisional data should they wish to. This will be replaced with validated performance data as soon as it is available.

28. A School Profile can be amended and updated throughout the year, should a school wish to do so.

29. More information and guidance can be found at the [School Profile section](#) of the TeacherNet website.

### **Annual Report to Parents**

30. Since 1 September 2005 only maintained nursery schools have been required to produce a Governors' Annual Report to Parents. All other maintained schools are required to produce a School Profile (see paragraphs 23–29, above). No schools (including maintained nurseries) are required to hold an annual parents' meeting but they may do so if they wish.

31. The Governors' Annual Report to Parents should explain how the governing body has put into practice its plans for the school since the last report. The report, which must be given to parents, must include:

- the names and status (parent, staff, foundation governor or otherwise) of the members of the governing body, the date when their term of office ends (except for ex officio governors), and the name and address of the chair and clerk (the school address may be used);
- a financial statement giving a summary of the school budget, how the governing body spent the funds given in the past year, details of any gifts made to the school, and governors' travelling, accommodation and meal expenses in the period covered by the report;
- information about school security;
- details regarding admitting disabled children to the school;
- details of the steps the school has taken to prevent disabled pupils being treated less favourably than other pupils;
- information about the facilities provided to help with access to the school for disabled pupils;
- the accessibility plan, covering future policies for increasing access by those with disabilities to the school;
- information about the implementation of the governing body's policy on pupils with SEN and any changes to the policy during the last year;
- details of how teachers' professional development has improved the quality of teaching and learning;
- the number of pupils on roll;
- the schools to which pupils transfer on leaving the nursery.

The governing body may want to include other information as well, such as details of the

foundation stage curriculum, standards of behaviour and how to make complaints.

### **The home-school agreement**

32. Under Sections 110 and 111 of the [School Standards and Framework Act 1998](#), the governing body of every maintained school is required to have in place a written home-school agreement, which should be drawn up in consultation with parents and pupils, and reviewed from time to time. The agreement should explain the school's aims and values and the respective responsibilities of the school and of the parents, and what the school expects of its pupils.
33. The governing body must invite parents to sign a declaration in support of the agreement, and it can also invite pupils to sign where they consider that the pupils are sufficiently mature to do so. If a parent refuses to sign the declaration, it should be made clear that this does not exempt them or their children from the normal school rules; and parents and/or pupils should not suffer any adverse consequences as a result of not signing the declaration. Guidance can be found at the [home-school agreements](#) area of the DCSF website.

### **Pupils' educational records**

34. The [Education \(Pupil Information\) \(England\) Regulations 2005](#) require maintained schools (other than nursery schools) and any special school (whether or not maintained by a local authority) to keep a curricular record for each pupil and disclose on request a pupil's educational record to their parent. Under these Regulations, maintained schools must transfer a pupil's educational record to his or her new school when he or she changes schools.
35. The duties outlined above regarding pupils' educational records are the responsibility of governing bodies, in line with the norm of powers and duties sitting with governing bodies as those legally responsible for the management of schools. However, a governing body may delegate these duties to the headteacher, having regard to their largely strategic role and the headteacher's responsibility for day-to-day organisation, management and control of the school.
36. Any Personal Educational Plan (PEP) for a pupil is now part of their educational record. The PEP is the document initiated by children's social services when a child is taken into care and maintained by the child's school, which provides a record of educational needs, objectives and progress and achievements. When a pupil transfers to a school in Wales, Scotland or Northern Ireland, his or her educational record, including the common transfer file (see Schedule 2 of the [Education \(Pupil Information\) \(England\) Regulations 2005](#) and paragraphs 52–62, below, for more information on the common transfer file), must be transferred to that school in line with the arrangements for transfer within England.

### **Keeping a curricular record for every pupil**

37. The governing body is responsible for ensuring that a curricular record is kept for every pupil registered at the school and that it is updated at least once every school year. The curricular record means a formal record of a pupil's academic achievements, his or her other skills, and abilities and progress in school.

### **Parents' requests to see or have copies of their child's educational record**

38. The governing body is responsible for making available a pupil's educational record to his or her parents, free of charge, within 15 school days of receipt of the parent's written request. If parents make a written request for a copy of the record, this must be provided to them, also within 15 school days of that request being received. The governing body can charge a fee for the copy, but if it does this, it must not be more than the cost of supply. The educational record should include the curricular record, but also other information about the pupil that may be kept by the school, such as details of behaviour and family background (definition given below).

### The educational record

39. The pupil's educational record is comprised of any record of information – other than information which is processed by a teacher solely for the teacher's own use – which:
- is processed\* by, or on behalf of, a governing body of, or a teacher at, any school maintained by an LA and any special school not so maintained;
  - relates to any person who is or has been a pupil at any such school; and originates from, was supplied by, or is on behalf of:
    - any employee of the LA which maintains the school (or former school) attended by the pupil to whom the record relates;
    - any teacher or other employee at the school or at the pupil's former school (including any educational psychologist engaged by the governing body under a contract for services) where the school is a voluntary aided, foundation or foundation special school or a special school not maintained by an LA;
    - the pupil to whom the record relates;
    - a parent of that pupil.

In addition, the educational record includes:

- any statement of SEN held in respect of the pupil
- any PEP held in respect of the pupil.

\*N.B. The “basic interpretative provisions” provided in [Section 1 of the Data Protection Act](#) are quoted below and provide the definition of “processing” to be applied.

Processing, in relation to information or data, means obtaining, recording or holding the information, or data or carrying out any operation or set of operations on the information or data, including:

- organisation, adaptation or alteration of the information or data;
- retrieval, consultation or use of the information or data;
- disclosure of the information or data by transmission, dissemination or otherwise making available;
- alignment, combination, blocking, erasure or destruction of the information or data.

### Material in the pupil's educational record exempt from disclosure to parents

40. When schools comply with a parent or carer's request to see or have a copy of a pupil's educational record under the [Education \(Pupil Information\) \(England\) Regulations 2005](#), there is some information that must not be disclosed. This is any information that may not be given under the [Data Protection Act 1998](#) or to which he or she would have no right of access under that Act or by virtue of any order made under [Section 30\(2\)](#) or [Section 38\(1\)](#) of the Act. The following information must not be disclosed:

- information, the disclosure of which would be likely to cause serious harm to the physical or mental health or condition of the child or someone else;
- information as to whether the child is or has been subject to or may be at risk of child abuse, where the disclosure of that information would not be in the best interests of the child;
- references supplied to potential employers of the child, any national body concerned with student admissions, another school, an institution of further or higher education, or any other place of education and training;
- information supplied by the school in a report to any juvenile court, where the rules of that court provide that the information or part of it may be withheld from the child;
- information recorded by the pupil during an examination;
- information concerning the child that also relates to another person who can be identified from that information, or which identifies another person as the source of that information, unless the person has consented to the disclosure, or it is

reasonable in all the circumstances to disclose the information without his or her consent, or the person is an employee of the LA or of the school. (This exemption does not apply where it is possible to edit the information requested so as to omit the name or any other identifying particulars of that other person.)

### **Access to information about pupils with statements of SEN**

41. Access to information about pupils with statements of SEN is governed by the [Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#) and the *Code of Practice on Identifying and Assessing Special Educational Needs*. Where a child has a statement of SEN, that statement forms part of the child's educational record. The parent must be sent a copy of the statement.

### **Requests by pupils to see their educational record under the Data Protection Act (DPA) 1998**

42. Both manual and computerised personal information held by schools is subject to the [DPA 1998](#). Under the Act, pupils who submit written requests to see or have copies of their records must be allowed to do so within 40 days, unless it is obvious they do not understand what they are asking for. When schools receive requests from pupils for disclosure of educational records under the DPA 1998, they must not disclose any information which may not be disclosed under that Act.
43. If a child seeks access to his or her statement of SEN, the school should normally comply with the request unless there are exceptional circumstances which suggest that access should not be granted (for example, if the child is clearly unable to understand the statement or disclosure of the statement could cause serious harm to the child).
44. Schools should always bear in mind that a statement may contain sensitive personal information and if in any doubt as to whether the statement, or any other information that forms part of the pupil's educational record, should be disclosed in any circumstances they should contact either the DCSF or the Information Commissioner's Office (ICO).
45. Information about specific restrictions on disclosure of statements is contained in the *Code of Practice on the Identification and Assessment of Special Educational Needs* and in [Regulation 24 of The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#). Queries relating to charging for copies made for pupils should also be addressed to the ICO. More information can be found on the [ICO website](#).

### **Dealing with complaints**

46. Ways of handling certain types of complaint (for example, admissions and curriculum, exclusions) are laid down by law (see chapters 3, 6, 12 and 13 of this Guide). Since 1 September 2003, governing bodies of all maintained schools and maintained nursery schools in England have been required, under [Section 29 of the Education Act 2002](#), to have in place a procedure to deal with complaints relating to the school and to any community facilities or services that the school provides. The law also requires the procedure to be publicised (see chapter 3 of this Guide, Governing body powers, duties and procedures).

## **INFORMATION FROM THE GOVERNING BODY TO OTHER SCHOOLS AND EDUCATIONAL ESTABLISHMENTS**

### **Transferring the curricular record when a pupil is under consideration for admission to another educational establishment**

47. When a pupil is being considered for a place at another school or institution of further or higher education, if the governing body is asked by the "responsible person" at that institution for the pupil's curricular record, it must be provided, free of charge, within 15 school days of the request being received. The responsible person is the headteacher of an independent school, the governing body of any other school or the person responsible for the conduct of any institution of further or higher education. The record sent must not

include results of any assessments of the pupil's achievements.

### **Transferring a pupil's educational record when he or she moves to a new school**

48. When a pupil ceases to be registered at one school and becomes registered at another (either maintained or independent) in England, the governing body of the old school is responsible for transferring their educational record to the new school. This must be done no later than 15 school days after the day when the pupil ceases to be registered at the old school.
49. Since 3 October 2005, schools have also been required to transfer pupil records to schools to which they transfer (either maintained or independent) in Wales, Scotland and Northern Ireland. The record must be sent to the governing body of the new school, or if the school is an independent one, the headteacher. Any statement of SEN or PEP for a child forms part of their educational record and as such must be forwarded to the child's new school.

### **When a school doesn't know the pupil's new school**

50. The duty to transfer a pupil's record doesn't apply where the old school doesn't know the new school and it is not reasonably practicable for them to find it out. What is reasonably practicable will depend on circumstances, but schools might be expected to telephone and write to the pupil's parents. Where both these approaches are unsuccessful, and it would involve disproportionate effort to discover the pupil's new school by other means, the school will be justified in deciding it is not reasonably practicable to fulfil the requirement.

### **When a school receives a request for a pupil's educational record from a school to which he or she has transferred**

51. If the pupil's old school receives a request for their educational record (which they still hold) from the headteacher of an independent school or the governing body of a maintained school, the governing body must ensure it is provided within 15 school days of the request being received.

### **The common transfer file**

52. When pupils transfer schools (including transfers to Further Education colleges) it is important their new school has, and acts on, information about previous performance. The requirement to send the common transfer file from the old school to the new school ensures specific information about the pupil is transferred with them. For full details on the common transfer file, please see Schedule 2 in the [Education \(Pupil Information\) \(England\) Regulations 2005](#).
53. The file data must be transferred from any maintained school in England to any other maintained or independent school in England to which a pupil transfers within 15 school days of the pupil ceasing to be registered at the old school. All such schools are expected to have the capability to transfer and receive the defined items of pupil data electronically.
54. Since 3 October 2005, where a pupil ceases to be registered at a maintained school in England and moves to a school, maintained or independent, in Wales, Scotland or Northern Ireland, their common transfer file must be transferred to that new school in line with the arrangements for transfer within England. The [Education \(Pupil Information\) \(England\) Regulations 2005](#), which came into force on 8 July 2005, describe the information that must be transferred and the method by which transfer must take place.
55. Since 3 October 2005, when both the school transferring the common transfer file and the school receiving it have the necessary facilities, then secure transfer must take place either:
- through the secure file transfer service known as "School to School" or "s2s" on the [TeacherNet website](#);
- or

- through an intranet provided for the purpose by or on behalf of an LA.
56. Although the basic model is that the old school will send the common transfer file to the new school by one of these methods, the law allows the file to be provided by LAs where there are agreed local arrangements to that effect.
57. Previously, schools have also been able to transfer the file by floppy disc or email attachment, but they will appreciate the need to transfer this data by the most secure means available. Schools experiencing difficulties in transferring the data using the DCSF secure file transfer service can find advice on the [School to School](#) section of the TeacherNet website.
58. Where schools do not have the capability for electronic transfer between themselves, either by means of the secure file transfer service on the TeacherNet website or through an intranet provided for the purpose by or on behalf of an LA, they may agree between themselves how to transfer the information securely. An example of this might be where a maintained school in England is transferring the common transfer file to a school in Scotland or Northern Ireland.

### Timing of transfer

59. The law requires that common transfer file data is sent to the receiving school no later than 15 school days after the day on which the pupil ceases to be registered at the old school. But schools do not have to transfer all the data at the same time. They might, for example, arrange to transfer basic data about pupils transferring from primary to secondary school, together with their end of Key Stage 1 assessment information, in February, and follow that up later with a second transfer of data, covering Key Stage 2 assessments and tests.
60. As long as the unique pupil number is included, the new data will be added to the existing record and there will be no danger of a duplicate record being created for the pupil. Alternatively, the data might be transferred by an LA in England when, through the co-ordinated admissions process, it is able to notify the maintained secondary schools in its area of the pupils who have been offered and accepted a place in the secondary school.

### What to do if the old school does not know the identity of the new school

61. Sometimes schools will not know the identity of the new school to which a pupil has transferred. Although it is not a requirement that they should do so, in these circumstances schools are encouraged to send the common transfer file to the special area of the [TeacherNet secure file transfer website](#), which forms a database of unclaimed pupil records. Schools that do not receive common transfer files for new pupils can ask named contacts in the LA to search this database to see if the files are there.

### Requesting the common transfer file from a pupil's former school

62. If a new school is aware of the identity of a pupil's former school but hasn't been sent the common transfer file or educational record, these can be requested directly from the former school. The former school is required to send the information held to the new school within 15 school days of receiving the request.

## INFORMATION FROM THE HEADTEACHER TO PARENTS AND OTHERS

### Pupil reports

63. The [Education \(Pupil Information\) \(England\) Regulations 2005](#) state that it is a requirement for headteachers of maintained schools to provide an annual written report on pupils' educational achievements for every registered pupil at their school; and to make arrangements for the recipients of the report to discuss its contents with the pupil's teacher if they so wish. The report must be provided to the pupil's parents every school year, or if the pupil is 18 or over, to the pupil. Where a pupil is 18 or over, a headteacher can also provide the report to the pupil's parent, as well as to the pupil, where the

headteacher considers there are special circumstances which make it appropriate.

64. Minimum content, prescribed by the Regulations, can be provided in one or more such reports. Schools can, of course, provide more than this minimum information required and headteachers can have a report translated, or produced in alternative formats such as Braille if appropriate. The information required in the annual pupil report must be provided by the end of the summer term of the school year to which the report relates. The only exception to this occurs when results of public examinations, national curriculum tests or reviews undertaken by the external marking agency of any national curriculum tests taken are not received by headteachers until after the end of the summer term and cannot, therefore, be provided to parents by the end of that term. In such cases, headteachers must provide parents with the results within 15 school days of receiving them.
65. Where a pupil is no longer of compulsory school age and has left the school, or is proposing to do so, headteachers are required to provide the pupil with a school leaver's report (in place of the annual pupil report). The school leaver's report must be provided by no later than 30 September following the pupil's last year at the school. The headteacher's report to school leavers must contain brief particulars of the pupil's progress and achievements in subjects and activities forming part of the school curriculum, other than in relation to any public examination or vocational qualification.

### **Minimum required contents of pupil reports for pupils in Reception Year to Year 13**

66. These minimum contents include:
- brief particulars of achievements in all subjects and other activities forming part of the school curriculum;
  - comments on general progress;
  - the attendance record (information about attendance showing the total number of possible attendances and total number of unauthorised absences expressed as a percentage of the possible attendances) during the period to which the report relates, unless the child is in Reception Year, or Years 12 or 13 and is no longer of compulsory school age;
  - the results of any national curriculum tests taken in the year where the pupil is in Key Stages 2–3;
  - national curriculum teacher assessment levels and national curriculum test results, as appropriate, with explanatory material where the pupil is in the final year of Key Stages 1–3;
  - comparative information about the attainments of pupils in that year in the school and nationally where the pupil is in the final year of Key Stages 1–3;
  - any public examination results by subject and grade, including any vocational qualification or credits towards any such qualification gained;
  - arrangements for discussing the report with the pupil's teacher if the recipient so wishes.

N.B. The annual [assessment and reporting arrangements booklets](#) from the QCA provide detailed information about reporting from Foundation Stage to the end of Key Stage 3.

67. Some information is exempt from disclosure in pupil reports. This includes:
- information concerning the pupil, but which also relates to another person who can be identified from that information;
  - information which identifies another person as the source of that information; unless, in either case:
  - that other person has consented to the disclosure;
- or
- it is reasonable in all the circumstances to disclose the information without his or her consent;
- or
- that person is an employee of the LA or of the school.



68. So, for example, this would include information that would disclose the levels in any attainment target or subject of any other child. (This exemption does not apply where it is possible to edit the information requested so as to omit the name or any other identifying particulars of that other person.) Other exempt material is that outlined above in the information about pupils' educational records (see paragraphs 39–40).

### **Content of reports where a pupil has a statement of SEN**

69. Reports for the annual review of a pupil's statement of SEN may, if schools wish, serve as the Governors' Annual Report to Parents. If so, headteachers should ensure the report provides the minimum information required in respect of any other pupil in the same school year. Additionally, schools should always provide contextual information, in particular by supplementing the minimum information with a more detailed account of a pupil's progress in relation to the curriculum that they are following.
70. Guidance on pupil reports (including best practice case studies) is available on the [Teachernet](#) website.

### **Online reporting to parents**

71. There is an expectation that schools will move towards online reporting which will offer parents online access to information on their child's attendance, behaviour and progress in learning. The online reporting expectation does not replace face-to-face and direct engagement, nor does it duplicate or replace the existing statutory requirement to provide annual pupil reports for parents; but it is intended to provide parents with up-to-date information at appropriate points through the year to maintain their interest and enable a richer dialogue.
72. Support materials and examples of good practice can be found on [the Becta website](#). Additional information on online reporting will also be available on the [TeacherNet website](#).

## **INFORMATION FROM THE GOVERNING BODY TO THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES**

73. The governing body must give the Secretary of State for Children, Schools and Families details of the results of national curriculum assessments taken by pupils, for the preparation of the national analyses published by the DCSF.
74. Each year the governing bodies of all maintained schools have to provide information to be used in the secondary school and primary school achievement and attainment tables (formerly performance tables). The most recent sets of tables are available at the [Achievement and attainment tables](#) section of the DCSF website.

## **INFORMATION FROM THE HEADTEACHER TO THE GOVERNING BODY**

75. The headteacher must give the governing body any information requested by it for the purpose of the exercise of any of its functions.

## **TRANSLATING DOCUMENTS**

76. Governing bodies should consider whether any documents that have to be published or made available for inspection at the school should be translated into other languages. Examples might include the prospectus or details of the LA's arrangements for considering complaints about the curriculum.

## **FREEDOM OF INFORMATION ACT 2000**

77. Under the [Freedom of Information Act 2000](#) (FOIA), it is a legal right for any person to ask a school for access to information that it holds. The aim of the FOIA is to promote a culture of openness and accountability among public sector bodies, and therefore improve public understanding of how public authorities (which include the governing

bodies of maintained schools) carry out their duties, why they make the decisions they do and how they spend public money.

78. The FOIA is overseen by the Information Commissioner (IC), whose Freedom of Information (FOI) duties are to:

- promote good practice
- give advice and guidance
- enforce compliance and investigate complaints
- report to Parliament on compliance
- approve publication schemes
- publicise the Act.

Both the IC and the Ministry of Justice (MoJ), formerly the Department of Constitutional Affairs (DCA), have produced guidance on the FOIA, including two Codes of Practice providing guidance to public authorities generally on the implementation of the Act and on records management.

79. The Lord Chancellor's *Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act (Section 45)* provides guidance to public authorities on good practice when handling requests for information. For more information visit the [Ministry of Justice website](#).

80. The IC also has responsibility for the [DPA 1998](#) and the [Environmental Information Regulations 2004](#) (EIRs). The DPA 1998 enables individuals to access information about themselves. The EIRs enable people to access environmental information.

81. In principle, the FOIA enables people to access all information, including the reasoning behind decisions and policies, which do not fall under the DPA or EIRs. Although FOI presumes openness, it recognises the need to protect sensitive information in certain circumstances and provides for exemptions.

82. Any request for information made in writing to a school since 1 January 2005 and which is considered non-routine is a request under the FOIA, EIRs, the DPA or a combination of any of them.

### **Right to request information**

83. Since 1 January 2005 there has been a legal right for any person to make a request to a school for access to information held by that school. Schools are under a duty to provide advice and assistance to anyone requesting information and must respond to the enquiry promptly, and in any event, within 20 working days of receipt (not including school holidays). See the [Freedom of Information \(Time for Compliance with Request\) Regulations 2004](#) which exclude days that are not school days from the 20 working day period.

84. Enquirers do not have to say why they want the information, and the request does not have to mention the FOIA. The request must be in writing, which includes fax or email. All requests for information that are non-routine and not covered by the [DPA 1998](#) (i.e. from individuals to see their own personal information) or [EIRs](#) are covered by the FOIA.

85. The enquirer is entitled to be told whether the school holds the information (this is known as the duty to confirm or deny), and if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to the original document. However, the Act recognises the need to preserve confidentiality of sensitive information in some circumstances and sets out a number of exemptions.

86. From 1 January 2005 there are four reasons for not complying with a valid request for information under FOI. These include situations where:

- the information is not held
- the £450 cost threshold is reached
- the request is considered vexatious or repeated

- one or more of the exemptions apply (see below).
87. The FOIA provides a series of exemptions. Some of the exemptions are absolute and some are qualified, in that they can be overridden by the public interest test. More information on these can be found in the detailed guidance issued by the DCSF, available on the [TeacherNet website](#).
88. Many of the exemptions are intended to protect sensitive or confidential information. However, some of the exemptions are there simply to avoid the legal position where two pieces of law cover the same information requested or where the information is already available by some other means. The exemptions most likely to be used by schools are mainly found under the DPA, and include:
- information accessible by other means, for example information available from a publication scheme or information that other legislation requires a school to give;
  - a request for personal information covered by the DPA (individuals may continue to make a “subject access request” under the DPA – these are where the enquirer asks to see what personal information the school holds about him or her);
  - environmental information: EIRs enquiries are those that relate to: air; water; land; natural sites; built environment; flora and fauna; health; and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, school playing fields, car parking and so on. For more guidance on EIRs, visit the [ICO](#) or [DEFRA](#) websites.
89. Expressions of dissatisfaction should be handled through the school’s existing complaints procedure. After these are exhausted, the case can be raised with the ICO, which has a duty to investigate complaints.

#### **What action does the governing body need to take?**

90. School governing bodies are responsible for ensuring a school complies with the FOIA. The new legal presumption of openness since January 2005 makes it more important than ever that a school decides its policies and conducts its day-to-day operations on a basis that stands up to public scrutiny.
91. It should be noted that wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence and so a governing body, or any person who is employed by, or is an officer of, or is subject to the direction of the governing body (as the public authority) may be at risk of criminal proceedings where such unlawful concealment, damage or destruction occurs. Therefore it is important that no action is taken to delete or amend records that are subject to a request for information.
92. Since requests for information can be directed to the school through anyone who works there, the governing body should ask itself whether all members of staff are aware of the FOIA and how the school handles requests for information. Governing bodies may choose to charge a fee, which must be calculated according to the [Freedom of Information and Data Protection \(Appropriate Limits and Fees\) Regulations 2004](#). Guidance on charging can be found in the [FOI area](#) of the TeacherNet website and on the [Ministry of Justice website](#).
93. The governing body should:
- agree the FOI publication scheme and access policy if it has not already done so. The policy will need to set out how the school proposes to deal with requests and state that all staff should be aware of the process;
  - agree a charging policy for complying with requests. The DCSF recommends that schools respond to straightforward requests for free, and charge where the costs are significant;
  - delegate to the headteacher the day-to-day responsibility for FOI policy and the provision of advice, guidance, publicity and interpretation of the school’s policy; consider designating an individual with responsibility for FOI to provide a single

point of reference; co-ordinate FOIA and related policies and procedures; take a view on possibly sensitive areas; and consider what information and training staff may need. For a generic PowerPoint presentation, visit the FOI area of the TeacherNet website;

- consider arrangements for overseeing access to information and delegation to the appropriate governing body committee;
- ensure that a well organised records management and information system exists in order to comply with requests within 20 days, excluding school holidays;
- keep a record of refusals and reasons for refusals as well as appeals, allowing the governing body to review its access policy on an annual basis;
- consider publishing a disclosure log on the school's website, setting out responses to requests that have been made to which the school can refer in responding to future requests for the same information.

94. Publishing a disclosure log is considered good practice and, over time, can be useful in steering the school's publication strategy by highlighting areas of interest that the school may wish to consider for future publication. However, it is recognised that for small schools with few requests under the FOIA, a disclosure log may be inappropriate.

95. On receipt of a request for information the school should:

- decide whether the request falls under the DPA, EIRs or the FOIA;
- decide whether the school holds the information or whether it should be transferred to another body;
- provide the information if it has already been made public;
- inform the enquirer if the information is not held;
- consider whether a third party's interests might be affected by disclosure, and if so consult them;
- consider whether any exemptions apply and whether they are absolute or qualified;
- carry out a public-interest test to decide if applying the qualified exemption outweighs the public interest in disclosing the information;
- ensure that the personal information is removed as set out in the guidance for schools if a request is made for a document that contains exempt personal information;
- decide whether the estimated cost of complying with the request will exceed the appropriate limit;
- consider whether the request is vexatious or repeated.

### **Fair Processing Notice**

96. The DPA requires schools to provide an oral or written statement, known as a fair processing notice or a privacy notice, to pupils, parents and staff where they have collected and stored information about them. The primary aim of the fair processing notice is to inform an individual about the nature of the personal data that has been collected and stored by the school, and how it has been used. The fair processing notice should also provide guidance setting out how an individual may request access to the information held. Further information on fair processing notices for pupils and for members of the school workforce can be found on the website of the Information Commissioner's Office which sets out the definition of 'privacy' or 'fair processing' notice along with detailed guidance. The DCSF's 'model' privacy notice can be obtained from TeacherNet.

## THE LAW

**N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up-to-date list of legislation applying to schools, refer to the GovernorNet website, [www.governornet.co.uk](http://www.governornet.co.uk)**

The Children's and Young People's Plan (England) (Amendment) Regulations 2007: SI 2007/57

Education (Provision of Information About Young Children) (England) Regulations 2007: SI 2007/712

The Disability Discrimination Act 1995: Section 28D

The Education Act 1996: Sections 404 (sex education), 408, 537, (Information about Individual Pupils), 541(1), (4)

The Education Act 2002 Section 30A, as inserted by the Education Act 2005: Section 104

The School Standards and Framework Act 1998: Sections 61 (behaviour and anti-bullying policy), 92 (publication of information about admissions), 110 and 111 (home-school agreements)

The Data Protection Act 1998

The Education Act 2002: Section 30

Education (School Curriculum and Related Information) Regulations: SI 1989/954 (as amended by SI 1989/1136, 1990/1109 and 1992/1089)

Education (Further Education Institutions Information) (England) Regulations: SI 1995/2065 (as amended by SI 1997/2173 and 1998/2220)

Education (School Information) (England) Regulations: SI 2002/2897 (as amended by SI 2005/2152)

Education (School Performance Information) (England) Regulations: SI 2001/3446 (as amended by SI 2002/2017, 2003/2135, 2004/1377 and 2004/2141)

Education (School Sessions and Charges and Remissions Policies) (Information) (England) Regulations: SI 1999/2255

Education (Pupil Information) (England) Regulations: SI 2005/1437 (as amended by SI 2008/1747).

Data Protection (Subject Access Modification) (Education) Order: SI 2000/414

Education (Special Educational Needs) (Information) Regulations 1999: SI 1999/2506

Education (Special Educational Needs) (England) (Consolidation) Regulations: SI 2001/3455

## GUIDANCE

Guidance on home-school agreements can be found at the [Home-school agreements](#) area of the DCSF website.

Information and downloads of QCA booklets on Assessment and Reporting at Key Stages 1, 2, and 3 are available on the QCA's website at [Assessment and reporting arrangements](#).

## Further help and sources of information

## 25. PROVIDING INFORMATION

Full guidance for schools, a PowerPoint presentation, retention schedule and electronic copies of relevant leaflets are available on the [GovernorNet](#) and [TeacherNet](#) Freedom of Information pages.

The Ministry of Justice leads on Freedom of Information. The [Ministry of Justice website](#) includes the Code of Practice on the Discharge of Functions of Public Authorities and the Code of Practice on the Management of Records.

The IC is the independent authority responsible for administering and enforcing the Freedom of Information Act. For more information, visit [www.ico.gov.uk](http://www.ico.gov.uk)

There is an expectation that schools will move towards online reporting. Online reporting: A letter to Heads and Chairs of Governors from the DCSF, Becta, the Workforce Agreement Monitoring Group and the Implementation Review Unit, giving information about online reporting, is available on the [TeacherNet website](#). Further information and materials about online reporting can be found on the [Becta website](#).

# Annex 1 GLOSSARY

## A

**Absence and Attendance Codes** – A list of codes devised by the Department for Children, Schools and Families (DCSF), which schools that are on the School Census are required to use when recording attendance and absence.

**Academies** – Publicly funded independent schools established under [Section 482 of the Education Act 1996](#).

**Achievement and attainment tables (formerly performance tables)** – The DCSF publishes tables that provide a reliable and easily accessible source of comparative information. The tables report achievements for primary school pupils at the end of Key Stage 2. The secondary (Key Stage 4) tables report the GCSE (and equivalent) achievements of pupils at the end of Key Stage 4. From 2006 the post-16 tables report A/AS level (and equivalent) achievements at Level 3 for schools and colleges.

Value-added measures are also published in the primary and secondary tables. The measures ensure that accountability is focused on the progress that pupils or students have made from one key stage to the next, whatever their starting points.

**Admission authority** – Local Authorities (LAs) are admission authorities with responsibility for admissions to community and voluntary controlled schools. The governing body of a foundation or voluntary aided school is the admission authority for the school.

**Admission forum** – [Section 85A of the School Standards and Framework Act 1998](#) requires all LA areas to have an Admission Forum. Admission Forums are groups of local admission stakeholders, independent of the LA, which scrutinise admission arrangements and discuss their effectiveness, consider how to deal with difficult admission issues and advise admission authorities on the ways in which their arrangements can be improved. Forums have an important power to publish an annual fair access report on admissions and may exercise their statutory right of objection to admission arrangements.

**Admissions register** – The details, in alphabetical order, of all pupils that attend a school.

**Agreed syllabus** – A syllabus of religious education that is not specific to one religion, adopted by an LA for teaching in community and controlled schools. The syllabus will be determined and written by an Agreed Syllabus Conference and recommended by the local body that advises the LA on religious education and collective worship (see SACRE, below).

**Appraisal** – The process of assessing how well a member of staff is carrying out his or her job.

**Approved educational activity** – An activity that takes place outside the school premises and which has been approved by a person authorised to do so by the proprietor of the school. The activity is of an educational nature, including work experience, and is supervised by a person authorised on that behalf by the proprietor of the school.

**Associate member** – A person who is appointed by the governing body as a member of a committee established by it, but who is not a governor.

**Attainment targets** – The knowledge, skills and understanding that pupils of differing

ability and maturity are expected to attain by the end of each key stage of the national curriculum, i.e. assessed at ages 7, 11, 14 and 16.

**Attendance register** – A register is called at the beginning of the morning session and once during the afternoon. It must contain the names of all the pupils that attend a school.

**Attendance Targets** – Overall targets for reducing absence set by governing bodies and, where required by the Secretary of State, “focused absence targets” as set out in the [Education \(School Attendance Targets\) \(England\) Regulations 2007](#).

**Audit Commission** – An independent body set up by Government to monitor the use of funds by LAs and certain other bodies.

**Authorised absence** – Where the absence of a pupil has been agreed by the person authorised on their behalf by the proprietor of the school.

## B

**Ballot** – A method of voting, normally secret.

**Behaviour support plan** – A statement that sets out local arrangements for schools and other service providers for the education of children with behavioural difficulties.

## C

**Capital expenditure** – Spending on building projects and large items of equipment. A more detailed definition is available on the [TeacherNet website](#).

**Catchment area** – A defined geographical area from which a school takes its pupils.

**Casting vote** – An additional vote to be used by the chair of governors if an equal number of votes are cast for and against a motion.

**Children and Young People’s Plan** – An overarching strategic plan for children’s services published by LAs under [Section 17 of the Children Act 2004](#).

**Children’s Trust** – A broad coalition of all those interested locally in the well-being of children, including schools. The Children’s Trust partnership arrangements are underpinned by Section 10 of the Children Act 2004, the duty to co-operate.

**Circular** – A policy statement issued by a government department, which does not have the status of law, but which gives guidance on interpretation and implementation of the law.

**City Technology College (CTC)** – Independent, all ability, non-fee-paying schools for pupils aged 11 to 18. There are two CTCs and one City College for the Technology of the Arts (CCTA) in urban areas across England. CTCs teach the national curriculum to under-16-year-olds with a focus on science, mathematics and technology. They offer a wide range of vocational qualifications and part of their role is to innovate in the development, management and delivery of the curriculum.

**Clerk to the governing body** – A person appointed to carry out administrative duties for the governing body such as preparing an agenda, minuting meetings and dealing with correspondence. The clerk advises the governing body on legal and procedural matters.

**Collaboration** – Where two or more governing bodies may arrange for any of their functions to be discharged jointly by holding joint meetings and/or having joint committees.



**Common transfer file** – Information which must be transferred when a pupil moves from a maintained school to another school (whether or not a maintained school).

**Community cohesion** – Working towards a society in which there is a common vision and sense of belonging by all communities; a society in which the diversity of people's backgrounds and circumstances is appreciated and valued; a society in which similar life opportunities are available to all; and a society in which strong and positive relationships exist and continue to be developed in the workplace, in schools and in the wider community.

**Community governor** – A person appointed as a governor whom the governing body considers to be committed to the good government and success of the school. This person may or may not live or work in the community served by the school.

**Community school** – A state school in England and Wales that is wholly owned and maintained by the LA.

**Community special school** – A state school in England and Wales that is wholly owned and maintained by the LA providing for pupils with special educational needs (SEN).

**Connexions** – A service that provides a single point of access for all 13- to 19-year-olds to help them prepare for the transition to work and adult life.

**Contingency fund** – Money set aside for unexpected costs.

**Core subjects** – English, mathematics and science are the subjects that must be studied by all pupils at every key stage. Progress in key stage 1 is assessed through statutory tests and tasks which are used to inform teacher assessment. Progress in key stage 2 is assessed through national curriculum tests and teacher assessment. Progress in key stage 3 is assessed through teacher assessment (see national curriculum tests, below).

**Current expenditure** – Spending on the day-to-day running of schools, including staff costs, heating and lighting, consumables and so on; sometimes called recurrent expenditure.

## D

**Delegation** – A process where one body or person gives another body or person authority to take decisions on a particular matter.

**Deletion from the school roll** – When a pupil's name is removed from the admissions register.

**Department for Children, Schools and Families (DCSF), formerly the Department for Education and Skills (DfES)** – The central government department with responsibility for education.

**Designated teacher** – An advocate who liaises with other services on behalf of young people in care.

**Diocese** – The area over which a bishop has jurisdiction.

**Disapplication** – The term used where parts or all of the national curriculum requirements are lifted or modified in relation to a pupil in specified cases or circumstances.

## E

**Early Years Foundation Stage (EYFS)** – The new regulatory and quality framework for the provision of learning, development and care for children between birth and the academic year in which they turn five (0–5).

**Early Years Foundation Stage Profile (EYFSP)** – Each child's level of development is recorded against the assessment scales in the EYFSP at the end of the term when the child reaches five years old. The EYFSP is designed to ensure that every child leaves the EYFS with their strengths acknowledged and celebrated, their learning and development needs identified, and plans made for the next steps in their learning.

**Education Welfare Officers** – Also known as education social workers or attendance advisers, these officers are employed by LAs to resolve problems of children and young people regularly missing school.

**Exclusion** – Banning a pupil officially from school by the headteacher, either temporarily or permanently, on disciplinary grounds.

**Ex officio governor** – Someone who is automatically a governor or able to attend meetings of a governing body by virtue of the office they hold, for example a headteacher, parish priest or vicar, i.e. the position of governor comes with the job.

**Extended school** – A school that provides a range of services and activities, often beyond the school day, to help meet the needs of its pupils, their families and the wider community.

## F

**Fair funding** – The term that describes the system of funding for schools introduced in April 1999, which sets the framework for the financial relationship between schools and LAs.

**Fair Processing Notice** – An oral or written statement that an organisation should give to individuals whose personal information they have collected. The statement is a requirement under the Data Protection Act 1998 and should inform the individual about the information collected, the purpose for its collection and how an individual may request access to it.

**Federation of governing bodies** – The arrangement whereby several schools join together under a single governing body. The schools remain separate schools but are governed by one body.

**Formula funding** – The method by which funds for school budgets are calculated. The most important factor is the number of pupils.

**Foundation governor** – A person appointed to be a member of a school's governing body, otherwise than by the LA, to ensure that the school preserves its particular religious character, or that it is conducted in accordance with the terms of a trust deed.

**Foundation school** – A type of state school introduced on 1 September 1999 by the [School Standards and Framework Act 1998](#), which has more freedom than community schools in how it is managed and with its admissions procedures. At foundation schools, the governing body is the employer and the admission authority. The school's land and buildings are owned by either the governing body or a charitable foundation. Funding comes from the LA, which also pays for any building work.

**Foundation special school** – A type of state school introduced on 1 September 1999 by the [School Standards and Framework Act 1998](#), which has more freedom than

community schools in how it is managed. It differs from a foundation school, in that it caters for children with special educational needs (SEN). At foundation special schools the governing body is the employer and admission to the school is through a statement, except in cases of emergency placements, which are described in Chapter 8 of the [SEN Code of Practice](#). The school's land and buildings are either owned by the governing body or by a charitable foundation. Funding comes from the LA which also pays for any building work.

**Fresh Start School** – A new school which is opened to replace a school causing concern as part of the DCSF Fresh Start programme.

## G

**General Teaching Council for England (GTCE)** – The professional body for school teachers.

**GovernorLine** – A professional helpline offering confidential email and telephone support across all aspects of school life to school governors, clerks and individuals involved directly in school governance in England. (The website address is [www.governorline.info](http://www.governorline.info) and the telephone number is Freephone: 08000 722 181.)

**GovernorNet** – A website providing up-to-date information on all aspects of school governance. It can be found at [www.governornet.co.uk](http://www.governornet.co.uk)

**Grant-maintained school** – A primary or secondary school previously financed through the Funding Agency for Schools (FAS) after parents had voted to opt out of LA control.

## H

**Her Majesty's Chief Inspector (HMCI)** – Her Majesty's Chief Inspector is the head of Ofsted (Office for Standards in Education, Children's Services and Skills).

**Her Majesty's Inspectors (HMIs)** – These are appointed by the Chief Inspector to support him or her in his or her statutory duties.

**Home-school agreement** – All state schools are required to have written home-school agreements, drawn up in consultation with parents. They are non-binding statements explaining the school's aims and values, the responsibilities of both school and parents, and what the school expects of its pupils. Parents will be invited to sign a parental declaration indicating that they understand and accept the contents of the agreement.

## I

**Inclusion statement** – A statutory statement in the national curriculum to provide effective learning opportunities for all pupils through the school curriculum. Teachers can modify (as necessary) the national curriculum programmes of study to set suitable learning challenges, respond to pupils' diverse learning needs, and address potential barriers to learning and assessment for individuals and groups of pupils.

**Independent school** – Any school that provides full-time education for five or more pupils of compulsory school age, which is not maintained by an LA and is not a non-maintained special school. As these are schools that are not funded by the state, they obtain most of their finances from fees paid by parents and income from investments. Some of the larger independent schools are known as public schools, while most boarding schools are independent. Further information is available from the Independent Schools Council information Service (ISCIS).

**Information Commissioner** – The independent office holder set up to oversee and enforce the Freedom of Information Act and the Data Protection Act. More information can be found at [www.ico.gov.uk](http://www.ico.gov.uk)

**In-service Education and Training (INSET)** – The professional training and development of teachers working in schools, generally taken as short courses or day conferences.

**Instrument of government** – A legal document detailing the composition of a governing body of a school.

## K

**Key stages** – The four stages of pupils' progress in acquiring knowledge and skills as set out in the national curriculum. Pupils are tested at the end of each stage: Key Stage 1, where the majority of pupils are aged 5 to 7; Key Stage 2, where the majority of pupils are aged 7 to 11; Key Stage 3, where the majority of children are aged 11 to 14; and Key Stage 4, where the majority of pupils are aged 14 to 16. There are statutory assessment arrangements at the end of key stages 1, 2, and 3.

## L

**Lay member** – A member appointed to a panel hearing appeals against non-admission or exclusion, being a person without personal experience in managing or providing education in any school (other than as a governor or on a voluntary basis). He or she must not have, or have had, any connection with the school, or any person who is a member of, or employed by, the governing body, if that might raise doubts about his or her ability to act fairly.

**LA** – Local Authority (formerly Local Education Authority).

**LEA governor** – A person appointed as a governor by the LA.

**List 99** – A list maintained by the Department for Children, Schools and Families of those people who are barred from working in schools and further education establishments. A number of people on the List are also barred from working with children across the children's workforce.

**Looked-after child** – A child who, as defined in [Section 22\(1\) of the Children Act 1989](#), is cared for by the LA or is provided with accommodation by an LA for more than 24 hours under a voluntary agreement with his or her parents, or who is the subject of a care order.

## M

**Maintained nursery school (MNS)** – A school providing education for children aged from three to five, maintained by the LA.

**Maintained school** – A school for which an LA has financial and administrative responsibility.

**Maintained special school** – A special school that caters wholly or mainly for children with statutory statements of SEN, for which an LA has financial and administrative responsibility.

## N

**National Assessment Agency (NAA)** – The NAA was a subsidiary agency of the Qualifications and Curriculum Authority (QCA) and had responsibility for national

curriculum tests and ensuring the smooth delivery and modernisation of the examinations system. However, in response to the publication of Lord Sutherland's report on the 2008 test delivery difficulties, QCA's Chairman Christopher Trinick announced on 16 December that the NAA would be fully integrated into the QCA. NAA has now been abolished. The National Curriculum assessment arrangements remain unchanged as NAA's functions have been transferred back to the QCA.

**National Challenge** – The National Challenge puts forward a range of interventions as part of a package of measures available to support schools where fewer than 30 per cent of pupils achieve at least five good GCSEs including English and maths. They are referred to in the National Challenge toolkit as “structural solutions”. These measures are designed to radically transform the school's leadership and governance to give the school the capacity for sustained improvement. For some schools this may be achieved through the closure and re-opening of schools as [Academies or as] Trust schools (or in federations) or the replacement of the school's governing body by an Interim Executive Board to pave the way for the school acquiring a National Challenge Trust – or forming a hard federation with a strong school.

**National curriculum** – The national curriculum provides a broad and balanced education for all children, covering 12 subjects overall, and is divided into four key stages according to age. It includes statutory assessments, consisting of tests and teacher assessments, at the end of key stages 1 and 2 and teacher assessments at the end of key stage 3.

**National curriculum tests (commonly referred to as SATs)** – Statutory national tasks or tests set by the National Assessment Agency (NAA) and taken by pupils at the end of key stages 1 and 2.

**Non-teaching staff** – Members of school staff employed by the governors to provide services in a school other than teaching, such as classroom assistants, cleaners and school secretaries.

**NQT** – A newly qualified teacher.

**Nursery classes** – A class in any school comprising children aged three and those who have their fourth birthday during the school year, and any other children whom it is appropriate to educate within that age group. This is usually the year before children attend reception class.

## O

**Ofqual** – Office of the Qualifications and Examinations Regulator, the organisation responsible for regulating qualifications, examinations and national curriculum tests in England.

**Ofsted** – Office for Standards in Education, Children's Services and Skills. It brings together the regulation and inspection of day care and children's social care and the inspection of LA children's services, schools, colleges, initial teacher training, work-based learning, adult education and more.

**Online reports** – Ministers have made clear their expectations that by September 2010 all secondary schools and by September 2012 all primary schools, will offer parents online access to information on their child's attendance, behaviour and progress in learning.

**Open enrolment** – All schools must admit pupils up to their Published Admission Number (see Published Admission Number, below), which is calculated according to the physical capacity of the school to accommodate pupils.

**Outturn** – A statement prepared annually by an LA showing its incurred expenditure, and the schools that it maintains, during the financial year. The statement is in a form prescribed by Regulations and must be published and sent to the Secretary of State for Children, Schools and Families.

## P

**Parent** – Any person having parental responsibility for a child or who has care of a child, including an LA. Therefore, depending on the circumstances, a “parent” may include not only the child’s natural parents but also others such as step-parents, relatives, co-habitees of either natural parent and foster parents.

**Parent Champion** – A person appointed where a school is causing concern (particularly when the school is in special measures or requiring significant improvement) to ensure good communication with parents and to help them influence decisions about the future of the school.

**Parent governor** – A parent elected by other parents of children at a school to serve on the governing body.

**Parental responsibility** – This means all the rights, duties, powers, responsibilities and authority that a parent of a child has by law. More than one person may have parental responsibility for the same child at the same time, and a person does not cease to have such responsibility solely because some other person subsequently also acquires it. Both parents have parental responsibility if they were married to each other at the time of the child’s birth, although they may have since separated or divorced. If the child’s parents were not married at the time of the birth, the mother has parental responsibility for the child, and the father is able to acquire parental responsibility for the child if he: marries the mother of the child; enters into a parental responsibility agreement with the mother; registers the child’s birth jointly with the mother (effective from 1 December 2003, but not retrospective); or applies to the court for a parental responsibility order. A residence order confers parental responsibility on the holder for the duration of the order. Parental responsibility passes to the adopter when an adoption order is made. Although a care order confers parental responsibility on an LA, the LA will not be treated as a parent for certain purposes under the Education Acts.

**Parenting contract** – A formal, voluntary, written agreement between a parent and either the LA or the governing body of a school. Parenting contracts require the party entering into the contract to fund any cost of the “supportive” element of the contract. In the context of a school, this will be the governing body (which has control of the school budget under the [School Standards and Framework Act 1998](#)). Parenting contracts can be used in cases of misbehaviour or irregular attendance at school or alternative provision.

**Partnership governor** – Where a school does not have a foundation or equivalent body, foundation governors are replaced by partnership governors who are appointed by the governing body after a nomination process.

**Parent Council** – A body of parents which represents parents and provides a forum for them to put forward their views to the headteacher and the governing body of their children’s school.

**Parenting orders** – Schools or LAs can apply to the Magistrates Court for a civil parenting order against a parent where their child has seriously misbehaved or is excluded from school. Parenting orders are also available as an ancillary order following a successful prosecution by the LA for irregular attendance or breach of a school

attendance order. The order places requirements on the parent to attend a parenting programme. The order will last up to 12 months and any breaches could lead to a fine of £1,000.

**Parent Support Advisors – PSAs** will continue to be rolled out nationally in the context of the extended school core offer for parenting support. They offer support for parents in a school context with a particular focus on improving pupil attendance, behaviour and attainment.

**Penalty notice** – Headteachers wishing to issue, or authorise their staff to issue, penalty notices must first gain the agreement of the governing body. The penalty is a fine and is an alternative to the parent being prosecuted in court. The school behaviour and attendance policies (where applicable) must be revised accordingly. Headteachers and deputy and assistant heads must comply with the local code of conduct issued by their LA when issuing penalty notices and provide to the LA a copy of any notice issued.

**Peripatetic teacher** – One who gives specialist instruction in a number of schools, for example, in music.

**Personal Education Plan (PEP)** – A record of what needs to happen so that looked-after children can fulfil their potential, reflecting any existing educational plans. The PEP should reflect the importance of a personalised approach to learning which secures good basic skills, stretches aspirations and builds life chances.

**Private Finance Initiative (PFI)** – A procurement route established in 1995, and more widely adopted since 1997. PFI requires private sector consortia to raise private finance to fund the project, which must involve investment in assets, and the long-term delivery of services to the public sector.

**Protection of Children Act List** – A list maintained by the Department for Children, Schools and Families of those people who are barred from working with children across the children's workforce.

**Published Admission Number (PAN)** – The fixed number of children which a school must admit if sufficient applications are received, as published by the admission authority for the school. The PAN may be less than the indicated admission number, but the admission authority would need to publish a notice to enable parents to object to the Schools Adjudicator.

**Pupil referral unit (PRU)** – An establishment maintained by an LA which is specially organised to provide education for children who are excluded, sick or otherwise unable to attend mainstream school, and is not a community or special school.

**Pupil reports** – it is a requirement for headteachers of maintained schools to provide an annual written report on pupils' educational achievements for every registered pupil at their school.

**Pupils on roll** – Pupils registered at a school.

## Q

**Qualifications and Curriculum Authority (QCA)** – Maintains and develops the national curriculum and associated assessments, tests and examinations.

**Qualified Teacher Status (QTS)** – The professional status required to teach in state-maintained schools in England and Wales. QTS is normally awarded after successful completion of an Initial Teacher Training course.

**Quorum** – The number of governors who must be present to validate the proceedings of a governors' meeting.

## R

**Reception classes** – Defined by Section 142 of the School Standards and Framework Act 1988. An entry class to primary schools for children who have their fifth birthday during the school year and for children who are younger or older than five with whom it is appropriate to educate them.

**Regulations** – Subordinate legislation deriving its authority from an Act of Parliament, legally binding on governing bodies and others (see also Statutory Instrument, below).

**Resolution** – A proposal made formally at a meeting that has been voted on and agreed.

## S

**SACRE** – see Standing Advisory Council on Religious Education.

**School company** – A company set up by schools to provide goods and services for schools in the company and other schools.

**School curriculum** – All learning and other experiences that schools provide for pupils. For maintained schools this must include the national curriculum, religious education, collective worship, sex and relationship education and careers education.

**School Improvement Partner (SIP)** – In most cases, someone with current or recent headship experience, who acts as a conduit between central government, the LA and the school, helping to set targets and priorities and identify support needed.

**School Profile** – This replaces the Governors' Annual Report (GAR) and aims to provide high-quality, up-to-date and accessible information about schools to parents and the general public, which gives them a broad and balanced view about what a school offers its pupils.

**School Teachers' Review Body (STRB)** – A body appointed by the prime minister to examine and report on such matters relating to the statutory conditions of employment of school teachers, including teachers' pay.

**Senior Designated Person** – A senior member of the school's management team who is designated to take lead responsibility for dealing with child protection issues, providing advice and support to staff and liaising with LA and other agencies involved in safeguarding children.

**Significant improvement** – A school requiring significant improvement is one that, although it does not require special measures, is performing significantly less well than it might be expected to perform. It will not be monitored but will be re-inspected after a year and expected to have improved significantly by then. If the school has not improved, it may be placed in special measures.

**Sixth form requiring significant improvement** – A school that requires significant improvement in relation to its sixth form is one that is failing to give its pupils over compulsory school age an acceptable standard of education or is performing significantly



less well than it might be expected to perform. There is no monitoring, but the school is re-inspected after one year.

**Special educational needs (SEN)** – Learning difficulties for which a child needs special educational help.

**Special measures** – A school that requires special measures is one that is failing to give its pupils an acceptable standard of education and whose leadership, management or governance does not demonstrate the capacity to secure the necessary improvement. Schools will receive termly monitoring visits commencing about five to six months after the date of inspection. If a school remains in special measures for two years a full inspection is conducted and the inspection report published.

**Specialist schools** – It is open to all maintained secondary schools (except those with serious weaknesses or in special measures) to apply for specialist status, allowing them to have a special focus on their chosen subject area while meeting the national curriculum requirements. Specialist schools work in partnership with private-sector sponsors and are supported by additional government funding.

**Sponsor governor** – A person appointed by the governing body who gives, or has given, substantial financial assistance (including assistance in kind) to the school.

**Staff governors** – The headteacher and/or people working at the school who are elected as a governor by people who are paid to work at the school.

**Standing Advisory Council on Religious Education (SACRE)** – A local body advising an LA on matters connected with religious education and collective worship in schools. Faith groups and teachers are represented.

**Statement of special educational needs** – A written statement of a child's special educational needs and all the extra help that he or she should receive. The arrangements are made by the LA.

**Statutory Instrument (SI)** – Subordinate legislation made under the authority of an Act of Parliament, usually authorised by the Secretary of State for Children, Schools and Families, or one of his or her ministerial team, and which is normally laid before Parliament. It has the same force in law as an Act of Parliament.

**Sure Start Children's Centre** – Usually based at a school or within a Sure Start Local Programme, it provides integrated services to the families of children under five in the local area.

**Suspension** – A process where a member of staff is told to stop working at the school temporarily, usually while a problem involving him or her is being investigated.

## T

**Training and Development Agency** – The national agency for the training and development of the children's workforce in schools in England. It is responsible for securing the supply of high-quality teachers, helping schools to develop their existing workforce, and supporting workforce reform. The TDA also has a central role in supporting LAs and schools in implementing extended services, providing access to a range of children's services to be universally available by 2010.

**Trust** – A charitable organisation that supports one or more schools by holding land on trust and appointing governors. It must be an incorporated organisation, either a charitable company or a body incorporated by Royal Charter.

**Trustee** – Usually a named individual (although can be a corporate body) responsible for the day-to-day management of the Trust, which is likely to include identifying and appointing governors for the school(s) that the Trust supports.

**Trust members** – Individuals or organisations who take decisions about the organisation of the Trust, including how trustees are elected or appointed. They also hold the trustees to account, for example at a general meeting.

## U

**Unauthorised absence** – This occurs when the school has not given permission for the absence of a pupil. Where the reason for it cannot be established at registration, the absence shall be recorded as unauthorised. Any subsequent correction to the register recording absence as authorised shall be made in such a manner that the original entry and the correction are both clearly distinguishable.

## V

**Voluntary aided school** – A school set up and owned by a voluntary body, usually a church body, largely financed by an LA. The governing body employs the staff and controls pupil admissions and religious education. The school's land and buildings (apart from playing fields, which are normally vested in the LA) will normally be owned by a charitable foundation.

**Voluntary controlled school** – A school set up by a voluntary body, often a church body (generally Church of England). These schools are totally funded by an LA, which employs the staff. Normally the school's land and buildings (apart from the playing fields, which are normally vested in the LA) will be owned by a charitable foundation.

## W

**Warning notice** – A notice by which an LA may notify the governing body of any of its concerns relating to school performance, a breakdown in leadership and management, or pupil or staff safety. This is sometimes referred to as a "formal warning".

# Annex 2 POLICIES AND OTHER DOCUMENTS THAT GOVERNING BODIES ARE REQUIRED TO HAVE BY LAW

## **Accessibility plan**

All schools

Disability Discrimination Act 1995: Sections 28D and 28E

## **Admissions policy**

Aided schools and foundation schools

Community and controlled schools, if the LA formally transfers the responsibility to them

Part 3 of the School Standards and Framework Act 1998 and the School Admissions Code

## **Allegations of abuse against staff (policy on)**

Guidance can found at Paragraph 2.19 of Safeguarding Children and Safer Recruitment in Education

## **Annual Report to Parents (from governors)**

See Governors' Annual Report to Parents, below

## **Attendance targets**

All schools except maintained nursery schools

The School Standards and Framework Act 1998: Section 63 (amended)

The Education (School Attendance Targets) (England) Regulations 2005: SI 2005/58

The Education (School Attendance Targets) (England) Regulations 2007: SI 2007/2261

## **Central record of recruitment and vetting checks**

All schools

School Staffing (England) (Amendment) (No. 2) Regulations 2006: SI 2006/3197

## **Charging policy**

All schools

(Community and voluntary controlled, consult LA)

The Education Act 1996: Section 457

The Education (School Sessions and Charges and Remissions Policies) (Information) (England) Regulations 1999: SI 1999/2255

## **Child protection policy**

All schools

The Education Act 2002: Section 175

## **Collective worship (policy on)**

All schools except maintained nursery schools

School Standards and Framework Act 1998: Section 70 and Schedule 20

## **Community Cohesion**

All Schools

Education and Inspections Act 2006: Section 38

## **Complaints procedure**

All schools

The Education Act 2002: Section 29

### **Curriculum policy**

All schools

The Education (Terms of Reference) (England) Regulations 2000: SI 2000/2122

### **Early Years Foundation Stage**

All schools

Statutory Framework for the Early Years Foundation Stage

Setting the Standards for Learning, Development and Care for Children from Birth to Five, May 2008 (ISBN 978 1 84775 128 7)

Practice Guidance for Early Years Foundation Stage

Setting the Standards for Learning, Development and Care for Children from Birth to Five, May 2008 (ISBN 978 1 84775 128 7)

### **Exclusion of pupils**

All schools

The Education Act 2002: Section 52

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England)

Regulations 2002: SI 2002/3178

Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2008

**The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations SI 2008/532**

### **Freedom of information publication scheme**

All schools

The Freedom of Information Act 2000: Section 19

### **Governors' allowances (schemes for paying)**

All schools (if school has agreed to pay expenses)

The Education (Governors' Allowances) (England) Regulations 2003: SI 2003/523

### **Governors' Annual Report to Parents**

Maintained nursery schools

The Education Act 2002: Section 30

The Education (Governors' Annual Reports) Regulations (England) 1999 (amended): SI 1999/2157

The Education (Governors' Annual Reports) Regulations (England) (Amendment) (No. 2) 2002: SI 2002/2214

### **Health and safety policy**

All schools

The Health and Safety at Work Act 1974: Sections 2(3), 3 and 4

Risk Assessments: The Management of Health and Safety at Work Regulations 1999: SI 1999/3242

### **Home-school agreements**

All schools except maintained nursery schools

The School Standards and Framework Act 1998: Sections 110 and 111

### **Instrument of government**

All schools

The School Governance (Constitution) (England) Regulations 2007: SI 2007/957

### **Minutes of, and papers considered at, meetings of the governing body and its committees**

All schools

The School Governance (Procedures) (England) Regulations 2003: SI 2003/1377

### **Performance management policy**

All schools

The Education (School Teacher Performance Management) (England) Regulations 2006: SI 2006/2661

Education (School Government) (Terms of Reference) (England) Regulations 2000: SI 2000/2122

Guidance on the Role of Governing Bodies and Headteachers, 2000

### **Prospectus**

All schools except maintained nursery schools

The Education (School Information) (England) Regulations 2002: SI 2002/2897 (amended)

### **Race equality policy**

All schools

The Race Relations (Amendment) Act 2000: Section 2 and Schedule 1A

### **Register of business interests of headteachers and governors**

All schools

The Financing of Maintained Schools Regulations 1999: SI 1998/101, Regulation 25 and Schedule 5(16)

### **Register of pupils**

All schools unless otherwise stated

The Education (Pupil Registration) (England) Regulations 2006: SI 2006/1751

### **Review of staffing structure document**

All schools

The Education (Review of Staffing Structure) (England) Regulations 2005: SI 2005/1032

### **Risk assessments**

See Health and safety policy above

### **School companies**

All schools where a company is established

Register: Companies Act 1985

The Education Act 2002: Sections 11 and 12 and Schedule 1

### **School Discipline and Pupil Behaviour Policies**

All schools

Education and Inspection Act : Section 88 (4)

### **Sex education policy**

All schools except maintained nursery schools

The Education Act 1996: Section 404

### **Special educational needs policy**

All schools

The Education (Special Educational Needs) (Information) Regulations 1999: SI 1999/2506

The Special Educational Needs Code of Practice 2001: DfES 581/2001

### **Staff appraisal policy**

See Performance management policy, above

### **Staff discipline conduct and grievance (procedures for addressing)**

All schools

The School Staffing (England) Regulations 2003: SI 2003/1963

### **Target-setting for schools**

All schools except maintained nursery schools

The Education (School Performance Targets) (England) (Amendment) Regulations 2007:  
SI 2007/2975

**Teachers' pay policy**

All schools

School Teachers' Pay and Conditions Document

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