



Department  
for Education

# **The Governors' Guide to the Law**

Issued May 2012

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# 1 INTRODUCTION

## Role of the governing body

1. The White Paper '*The Importance of Teaching*' sets out the government's approach to school governance. It described school governors as the unsung heroes of the education system, and one of the biggest volunteer forces in the country, with volunteers working in their spare time to promote school improvement and to support head teachers and teachers in their work. It observed that governing bodies sometimes lack the information or training needed to challenge effectively and support the head teacher and senior leadership of the school to improve. Since then, the government has published extensive school performance information for governors to use in comparing school performance and the National College has developed training for chairs of governors.
2. The White Paper also emphasises the benefits of smaller, better skilled governing bodies which can move more quickly to support the head teacher and champion high standards. Changes made in the Education Act 2011 enable governing bodies to move to a new model with a smaller number of fixed categories and a new optional category of governors to be appointed on the basis of skills. This should assist governing bodies in focusing on educational standards, and in holding the head teacher to account. [These changes are not yet in force.]
3. Most of the statutory duties placed on governing bodies should be delegated to head teachers, allowing governors to focus on educational attainment and other significant issues facing their school. The most significant duties that cannot be delegated to the head teacher are:
  - major changes to the way the school is organised;
  - the organisation and operation of, and delegation by, the governing body; and
  - appointing the head teacher and any deputies.
4. The purpose of the Guide is to help governors understand how a school operates, their legal obligations and the way in which these should be delegated. It is essential that governors, working with head teachers, put in place systems that free up governors to consider strategic issues and reflect on the performance of the school. The chair of governors, the clerk and the head teacher should all work closely to ensure that the governing body's work is managed in a way that focuses on key strategic issues, with detailed work being carried out by school staff or other professionals or experts.
5. The Academies programme is growing rapidly as maintained schools see the benefits of greater autonomy and relish the freedom to forge new relationships and provide new services for pupils and the community. Governing bodies have to decide whether or not their school should embrace Academy status and the Guide provides information about the conversion process in section 2. We strongly encourage all schools to find out about the Academies programme by talking to Academy converters to hear first hand about the benefits and drawbacks of Academy status.
6. If you are a governor of a small school, you might want to consider whether you could work with a group of schools to strengthen governance through collaboration and federation, or by converting to become Academies as a group.

## Using the Guide

7. It is not possible for this Guide to provide a full explanation of how the law applies in individual cases. The Guide includes corrected information reflecting the position at 1 March 2012 but also indicates the date at which further changes will be made. We

## 1. Introduction

intend to revise individual sections as legislative or other changes are made.

8. If legal problems arise, governing bodies should seek advice tailored to their circumstances from their local authority, or obtain their own legal advice. Free professional and confidential advice and assistance is also provided by GovernorLine at [www.governorline.info](http://www.governorline.info) (tel: 08000 722 181).
9. The main text refers to community schools (including community special and maintained nursery schools) and most provisions apply to other categories of school. 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; and
  - F: foundation, including foundation special.

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

10. All references in the Guide to “the head teacher” include the acting head teacher at any time when the school does not have a permanent head teacher, or when an acting head teacher has been appointed in the absence of the head teacher.
11. At the end of each section 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 be ordered from bookshops, accessed on the DfE website at <https://www.education.gov.uk/publications>, the National Archives website at [www.legislation.gov.uk](http://www.legislation.gov.uk), or the Stationery Office’s publications website at [www.tso.co.uk](http://www.tso.co.uk).
12. At the end of the Guide you will find a brief glossary. The list of statutory policies that schools are required to have and their review frequency can be found on the DfE website: <http://www.education.gov.uk/schools/toolsandinitiatives/cuttingburdens/a00201669/statutory-policies-for-schools>.
13. Hard copies of some DfE documents mentioned in the Guide can be obtained from: Department for Education Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham NG16 0DJ (tel: 0845 602 2260, fax: 0845 603 3360, minicom: 0845 605 5560, email: [dfe@prolog.uk.com](mailto:dfe@prolog.uk.com)). All Departmental publications are free unless a price is shown.
14. We will maintain an up-to-date Guide on the DfE website (<https://www.education.gov.uk/publications>). Copies can be downloaded from the website.
15. The Guide is a lengthy document and we will work with stakeholders towards a shorter version with a stronger focus on the strategic role of the governing body. Different sections of the Guide will be updated from time to time as the need arises.

## 2 Academy Conversion

### KEY POINTS

**There are a number of issues that the school governing body will wish to consider in taking forward an application to convert to academy status.**

### CONSULTATION

1. There is a statutory requirement for the governing body to consult with interested parties. The TUPE (Transfer of Undertakings (Protection of Employment) Regulations require the school to consult staff but schools are otherwise generally free to choose how, and with whom they consult. We would expect schools to consult parents. Schools with a religious designation must consult their Diocesan Board or relevant religious authority.

#### Method and timing of consultation

2. Schools can consult in a number of ways which may include posting information on the school's website, newsletters/meetings for parents and discussions with students. It is important that interested groups, individuals and organisations have a fair chance to respond and ask questions.
3. There is no set time for carrying out the consultation, although it will be useful to have discussions at an early stage to ensure that interested parties understand the proposed changes. The process must legally be complete before a funding agreement is signed with the Secretary of State.

#### Evidence

4. The governing body must be in a position to confirm that it has consulted the appropriate persons, the dates on which consultation was carried out and that the views obtained were properly considered. Schools don't need to provide documentary evidence of this as part of the application process, but will need to ensure it is available on request.

#### Equalities impact assessment

5. Under equalities legislation, public bodies are required to have "due regard" to the need to eliminate discrimination, promote equality of opportunity and foster good relations in the exercise of all their public functions. Schools should consider whether they need to carry out an equalities impact assessment in relation to their conversion to Academy status.

### RESOLUTION TO CONVERT

6. The governing body must pass a resolution confirming that it wishes to convert to Academy status before the school can make a formal application. A majority decision in favour of conversion is required. In the case of voluntary aided or foundation schools, the school's foundation and the trustees will also have to give their consent before the governing body can apply.

### STAFFING ISSUES

7. Academies are required to abide by employment law, although they have the ability to set their own pay and conditions. Immediate changes to the staff structure and operations do not normally happen but once open, the Academy Trust may consult with staff and their union representatives on changes to terms and conditions. The Academy Trust/governing body is responsible for setting the pay and conditions of

## 2. Academy Conversion

Academy staff which allows governing bodies to be innovative in creating extra incentives for staff.

### **CRB checks**

8. The Chair of Governors is responsible for ensuring that all appropriate CRB checks are carried out on all personnel who could potentially come into unsupervised contact with children, young people and vulnerable groups. This includes school staff, parents, governors, trustees and contractors. Academies are required to keep their own “central register” which contains all the evidence of checks carried out.

### **TUPE**

9. TUPE applies to all converting schools and should start as soon as conversion is proposed. The statutory obligation to consult lies only with the current employer of the affected employees, and then only if they themselves are taking measures which affect staff – there is no obligation to consult on the Academy’s measures. Schools which employ their own staff (e.g. foundation schools) will need to go through the TUPE process as there will be a change of employer from the existing governing body to the new Academy Trust. Governing bodies not otherwise involved in the process may consider consulting unions to foster good employee relations even though they are not legally obliged to do so.

### **WHAT LEGISLATION DOES THIS REFER TO?**

[The Academies Act 2010](#)

[The Equality Act 2010](#)

[Transfer of Undertakings \(Protection of Employment\) Regulations](#)

## 3 CONSTITUTION OF GOVERNING BODIES

### UPDATE STATUS

This section reflects current legislation. The Education Act 2011 will introduce changes to the constitution of governing bodies, including federated governing bodies, and revisions to the school governance procedures regulations. These changes will come into force in September 2012.

### KEY POINTS

The aim of this section 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 on [the DfE website](#).

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 governors 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 (below).

### 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

### 3. Constitution of governing bodies

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.

“Parent” is defined for the purposes of the Constitution Regulations as including “any individual who has or has had parental responsibility for, or cares or has cared for, a child or young person under the age of 18”. It includes a person who the child lives with and who looks after the child, irrespective of what their relationship is with the child. The reference in the definition must be to someone involved in the full-time care of the child on a settled basis.

5. For community, community special and VC schools, and MNS, the Local Authority (LA) has the responsibility for arranging the elections, though it can delegate this to the head teacher.
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 head teacher).
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 reasonably practicable;
  - a parent of a former pupil at the school, or if that is not reasonably practicable ;
  - 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 reasonably practicable;
  - a parent of a former pupil at the school, or if that is not reasonably practicable ;
  - 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 reasonably practicable ;
  - 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 head teacher – see paragraph 11 below) 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 head teacher is a member of the governing body by virtue of their office and counts in the member of the staff category. If the head teacher decides not to be a governor, he or she must inform the clerk of that decision in writing. The head teacher'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.

### **AUTHORITY (LEA) GOVERNORS**

13. Authority governors are appointed by the LA. LAs can appoint any eligible person as an authority governor. A person is disqualified from appointment as an authority 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. 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.
 

VA  
VC  
F
18. 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.
 

F
19. Parents of registered pupils at the school, staff eligible to be staff governors,

### 3. Constitution of governing bodies

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	Authority	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 head teacher	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 head teacher	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 head teacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than 45%

	Category of governor				
<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 head teacher	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 head teacher	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 head teacher	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](#).

### 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 head teacher or to any additional governors appointed by the LA or the Secretary of State for Education. 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);
  - any associate member.
27. Authority 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 religious body.
- F
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 on a reconstitution of the governing body 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. This does not apply to a change of school category. When a school changes category and there are more governors in any of the categories of governors than in the new instrument of government and that excess is not eliminated by governors resigning, the surplus governors must cease to hold office immediately. The governors who are to cease to hold office are

to be determined on the basis of the shortest period of continuous service. Where there is equal seniority, removal will be determined by drawing lots. See the Schedules to the [School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2007](#).

### 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 his or her 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:
- 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, an interim bankruptcy restriction order, a debt relief order or an interim debt relief order;
  - has had his or her 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 Disqualification 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 429(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.

**WHAT LEGISLATION DOES THIS REFER TO?**

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)

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

The School Governance (England) (Amendment) Regulations 2012: [SI 2012/421](#)

## 4 GOVERNING BODY POWERS, DUTIES AND PROCEDURES

### UPDATE STATUS

This section reflects current legislation. The Education Act 2011 will introduce changes to the constitution of governing bodies, including federated governing bodies, and revisions to the school governance procedures regulations. These changes will come into force in September 2012.

### KEY POINTS

This section 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 sections. The section 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 (enactment of [Section 9 of the Charities Act 2006](#) in relation to these governing bodies deems them excepted charities, which means that they are subject to a degree of regulation by the Charities Commission, and have to register if they are above the financial threshold).  
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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.
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.  
VA  
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## 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 sections 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 head teacher, 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 head teacher.

## 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. 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 may be able to get advice on how to deal with complaints from the LA, and the Department for Education has published a research report<sup>1</sup> on parents' and young people's complaints about schools with an accompanying 'good practice' practitioners guide<sup>2</sup> for handling complaints. A [toolkit document](#), containing key messages to help schools to draw up a complaints procedure or modify an existing procedure is also available on the Department for Education website.
13. A complaint may be made to the Secretary of State for Education 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 could instruct either party to do to put matters right. The Secretary of State must be satisfied that a decision is unreasonable in the

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<sup>1</sup> <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR193>

<sup>2</sup> <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR193A>



sense that no reasonable authority or governing body, acting with due regard to its statutory responsibilities, would have reached that decision.

### **EQUALITY DUTIES**

14. The governing body has responsibility for making sure that the school complies with the equality duties set out in the [Equality Act 2010](#). The Department for Education has provided advice to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act, the advice can be accessed on the [Department for Education website](#). The general duty on schools is to have due regard to the need to eliminate unlawful discrimination, promote equality of opportunity and foster good relations in the area of race, disability, gender, religion or belief, sexual orientation and gender reassignment. Specific duties require schools to publish information demonstrating compliance with the general duty and to publish equality objectives
15. It is for schools to decide how they will meet the duties and what information they will provide to demonstrate compliance. See section 18 of this Guide, Equalities, for a full description of the general and specific duties of governing bodies for all protected characteristics under equality legislation.

### **RELATIONSHIP WITH THE HEAD TEACHER**

16. In a well-managed school, the head teacher and governing body work in close partnership. The respective roles and responsibilities of governing bodies and head teachers are set out in the [Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000](#).
17. 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.
18. The governing body should monitor and evaluate the 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 head teacher and the School Improvement Partner (SIP). The school improvement plan will generally provide the main mechanism for the strategic planning process.
19. The head teacher 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.
20. A good head teacher 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 head teacher should give the governing body enough information to enable it to feel confident that both it and the head teacher are fulfilling their statutory responsibilities.
21. A good governing body will delegate enough powers to allow the head teacher to perform his or her management duties as effectively as possible. The head teacher 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 head teacher is also accountable to the governing body – both for the functions performed as part of the head teacher’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 Head teachers](#). The conditions of employment for head teachers are set out in the *School Teachers’ Pay and Conditions Document*, which is updated each year. This document has legal force. (See section 11 of this Guide, Staffing.)

22. To assist the governing body in carrying out its functions, the head teacher 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**

23. 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.
24. 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 head teacher of this. The LA should also inform other stakeholders where relevant, for example the diocese, the foundation or the Education Funding Agency, 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: [Schools causing concern - guidance for local authorities](#) (2011).

#### **TARGET-SETTING**

**(N.B. This paragraph does not apply to maintained nursery schools.)**

25. The requirement for schools to set statutory performance targets was removed from September 2011.
26. Instead of requiring schools to set targets on specific measures through a standardised process, we will expect schools to set their own improvement priorities so they can determine what targets and measures to set for themselves, along with choosing what forms of external support they want and determining how to evaluate themselves.

#### **FURTHER EDUCATION IN SCHOOLS**

27. 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.
28. 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 in [Section 80 of the Schools Standards and Framework Act 1998](#).

29. 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](#).
30. The Chief Executive of Skills Funding (“the CE”) (and through him, the Skills Funding Agency) has the responsibility for securing the provision of FE facilities generally and for funding post-16 provision. Under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009, the CE 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 section 23 of this Guide, Extended activities in schools.)
31. 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.
32. 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 102](#), which replaces 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.

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

33. 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 on consultation with pupils in taking decisions affecting them. ‘Listening to and involving children and young people’ is the updated version of ‘Working Together: Listening to the voices of children and young people’ and was published in April 2012:  
<http://www.education.gov.uk/schools/leadership/schoolethos/g00206160/listening-to-and-involving-children-and-young-people>.

#### **POWER TO INNOVATE**

34. Power to Innovate” (Ptl) was introduced for schools in the Education Act 2002. On the application of one or more qualifying bodies – which includes school governing bodies of maintained schools, head teachers (with the consent of it’s governing bodies), foundations, Academy proprietors and local authorities - the Secretary of

State may make an order suspending or modifying education legislation or conferring the functions of one qualifying body on another for a period of up to three years to allow the testing of an innovative idea that has the potential to raise educational standards. Orders can also be extended once for a period up to an additional three years.

35. The Power can only apply to education legislation. It cannot be used to gain exemption from other types of legislation, for example, health and safety legislation, employment or contract law or the law regulating charities. **It is important to note that once a Ptl Order period runs out then the school must revert back to the position 'as was' prior to the Order.**

#### GOVERNING BODY PROCEDURES

36. 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**

37. 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 head teacher 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**

38. 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.
39. 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**

40. 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**

41. The governing body can remove the chair or vice-chair from office unless the chair has been nominated by the Secretary of State for Education under [Section 67 of the Education and Inspections Act 2006](#).

42. 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 clear days in advance of the meeting.
43. 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**

44. The clerk needs to work effectively with the chair of governors, the other governors and the head teacher 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**

45. The governing body must appoint a clerk to the governing body. Governors, associate members and the head teacher of the school cannot be appointed as clerk to the governing body.
46. 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 head teacher) to act as clerk for that meeting.

### **Functions of the clerk**

47. 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**

48. 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**

49. Governors, associate members, the head teacher 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**

50. 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.

51. 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.
52. The clerk must give each governor, associate member and the head teacher (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 clear 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 clear 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**

53. 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**

54. 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 is 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.
55. 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**

56. The clerk must ensure that minutes are drawn up, approved by the governing body and are signed by the chair at the next meeting.
57. [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. 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.

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

58. 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**

59. 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.
60. 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.
61. Any motion to suspend must be specified as an agenda item of a meeting for which at least seven clear 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.
62. 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.
63. 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**

64. A governing body can delegate any of its statutory functions to a committee, a governor or the head teacher, 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.
65. 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.
66. 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 suspension of governors;
  - the delegation of functions;
  - the establishment of committees.
67. 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**

68. 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 section 11 of this Guide, Staffing.

### **Establishment of committees**

69. 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**

70. 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.



71. The head teacher of the school cannot be appointed as clerk to a committee. The governing body can appoint a governor to clerk one or more committees.
72. 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 head teacher) to act as clerk for that meeting.
73. The governing body can remove a clerk to a committee from office at any time.

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

74. 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**

75. Members of committees, the head teacher (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**

76. 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**

77. The clerk must give each governor and associate member who is a member of the committee and the head teacher (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 clear 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**

78. 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**

79. 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**

80. 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.

81. 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**

82. 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.

**WHAT LEGISLATION DOES THIS REFER TO?**

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 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 Equality Act 2010

**FURTHER SOURCES OF INFORMATION**

Roles of Governing Bodies and Head teachers, DfEE Guidance, issued September 2000

School complaints procedure located in the roles and responsibilities area of the Department for Education website

The Innovation Unit website

Extended Schools: providing opportunities and services for all (2002), on the Department for Education website

Schools Causing Concern, on the Department for Education website

## 5 SUPPORT AND TRAINING FOR GOVERNORS

### UPDATE STATUS

Funding restrictions have prevented the Department from reviewing and updating the existing offer to governors. The Department is however working with the National College to meet the commitment made in the Schools White Paper published in November 2010 to provide training and support for chairs of governing bodies.

### KEY POINTS

This section gives details of the Department for Education (DfE) 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 Local Authority (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. 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

4. 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 Head teachers**

The National Development Programme for Chairs of Governing Bodies and Head teachers was introduced to meet the demand for more support for chairs of governing bodies and to encourage them to work together proactively with head teachers, 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 head teacher.
- b) "Leading Together" is a facilitator-led programme that aims to bring together chairs and the governing body with head teachers 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@education.gsi.gov.uk](mailto:governor.materials@education.gsi.gov.uk) or through the training and recruitment section of the [DfE website](#). It should be noted that these programmes have not recently been updated and more up-to-date programmes are available from various commercial suppliers. Local Authority governor support teams and the National Governors' Association will be able to give details of these programmes.

**iv) Leadership Development Programme for Chairs of Governing Bodies**

The National College for School Leadership is working under remit to the Department for Education to provide a leadership development programme for chairs of governors. The College has published a booklet 'Leading governors' that can be downloaded or ordered from the [National College website](#). Information on forthcoming development opportunities can also be found on the site.

**TIME OFF FROM WORK**

5. [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**

6. 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 Innovation and Skills](#) website.

### **SETTLING DISAGREEMENTS**

7. 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**

8. 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 DfE 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).
9. The list in paragraph 8, above, 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.
10. Travel expenses must be paid at a rate not exceeding the maximum level of HM Revenue and Customs authorised mileage rate. The rates are changed annually and can be found on HM Revenue and 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 and 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.
11. 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.
12. Where a governing body does not have a delegated budget, the allowances referred to in paragraph 8, above, may be paid for by the LA at a rate determined by them.

### **FURTHER INFORMATION**

13. 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: 0207 901 1900  
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.churchofengland.org/](http://www.churchofengland.org/)

Information for School and College  
Governors (ISCG)  
PO Box 3934  
Gerrards Cross  
SL9 1AG  
Tel: 01483 300280  
Email: [iscg@governors.uk.com](mailto:iscg@governors.uk.com)  
[www.governors.uk.com](http://www.governors.uk.com)

National Governors' Association  
Ground SBQ  
36 Great Charles Street  
Birmingham  
B3 3JY  
Tel: 0121 237 3780  
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 722 181 or email via their website at [www.governorline.info](http://www.governorline.info)

## USEFUL RESOURCES FOR FURTHER INFORMATION

DfE School Governance Unit  
Mowden Hall  
Staindrop Road  
Darlington DL3 9BG  
Tel: 01325 735571

DfE Publications Centre  
Tel: 0845 602 2260

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

The School Governors' area on the DfE website.

Your Local Authority or Diocesan Governor Support Services Department

The National Archives (TNA), incorporating Her Majesty's Stationery Office (HMSO)  
at [The National Archives](http://The National Archives)

## WHAT LEGISLATION DOES THIS REFER TO?

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

Education Act 2002: Sections 19(3) and 22

## 6 GOVERNING BODY FEDERATION AND COLLABORATION

### UPDATE STATUS

This section reflects current legislation. The Education Act 2011 will introduce changes to the constitution of governing bodies, including federated governing bodies, and revisions to the school governance procedures regulations. These changes will come into force in September 2012.

### KEY POINTS

This section 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).

### 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 section are to federated governing bodies (i.e. federated in accordance with the Federation Regulations) unless otherwise specified.

2. The Regulations provide that a federation must contain at least two schools.
3. More informal collaborative arrangements between maintained schools and non-maintained schools (such as City Technology Colleges, Academies, Free Schools 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, Free Schools and independent schools). More detailed guidance on the Regulations is available on the [DfE 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 head teacher 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 for Education, via [school.organisationproposals@education.gsi.gov.uk](mailto:school.organisationproposals@education.gsi.gov.uk) (this requirement was 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 the [school.organisationproposals@education.gsi.gov.uk](mailto:school.organisationproposals@education.gsi.gov.uk) mailbox. 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 section 3 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 section 3 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 section 3 of this Guide (Constitution of governing bodies), except for

paragraph 20, below. In these paragraphs, references to “the school” in this section should be read as “the federation”.

20. The head teacher 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.

#### **Authority (LA) governors**

21. LAs can appoint any eligible person as an Authority governor. A person eligible to be a staff governor is disqualified from appointment as an Authority 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 Authority governors, and in what proportion.

#### **Community governors**

23. The definition of community governors is outlined in paragraphs 14–16 of section 3 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 section 3 of this Guide (Constitution of governing bodies).  
References to “the school” in this section 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. Partnership governors can be members of staff employed at schools that do not form part of the federation.
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, at 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 section 3 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 section 3 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 9 and no more than 29, excluding sponsor governors or additional foundation governors, as per paragraph 36, below.
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, above.
33. In calculating the number of staff governors required, the head teacher governors must be included whether or not the head teacher of the federation (if there is one), or any head teacher 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 section 3 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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F**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 Authority 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:

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- 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 Authority governors ;
- at least two community governors ;
- at least two foundation governors (or partnership governors for schools without a foundation).

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 2003](#) 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:

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- 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.
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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.
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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 2009](#) 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 head teacher of the federation (if any) shall have the power to suspend any person employed to work at the federation. The head teacher 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, above, 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 ([Section 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\*. The governing body will be able to use these budgets 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).

\*Since March 2011 LAs have been able to allocate a single budget share to a ‘hard’ federation ([Regulation 22 of the School Finance \(England\) Regulations 2011](#)), though they do not have to do so. If they do, they must ensure that the single budget share is not less than the federation would have received had the LA allocated a budget share for each school within the federation.

### 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:

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- all relevant LAs;
- the head teacher of the federation and each head teacher 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 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 one week, 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;
  - 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, above, within one week to the persons named under paragraph 53, above. Where the governing body of the federation decides that a school should leave the federation, it must notify the Secretary of State of this decision within one week via the [school.organisationproposals@education.gsi.gov.uk](mailto:school.organisationproposals@education.gsi.gov.uk).

#### **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 the 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 one week.

66. The persons to be notified are:

VA  
VC  
F

- all relevant LAs
- the Secretary of State (via the [school.organisationproposals@education.gsi.gov.uk](mailto:school.organisationproposals@education.gsi.gov.uk) mailbox);
- the head teacher of the federation and each head teacher 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](#).

### **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 LA (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 the 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 section, 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](#) 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..

#### 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 section 4 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 2009](#) apply.
75. The selection of the head teacher or deputy head teacher 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 head teacher may be delegated to one or more governors.
76. As the guidance on the [School Staffing \(England\) Regulations 2009](#) makes clear, most decisions on staff appointments are recommended to be delegated to the head teacher, as are the decisions on dismissal. However, these functions can be delegated to several combinations of head teachers 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 head teachers) 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 head teacher) 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 section 4 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 section 4 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 head teachers, 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 section 4 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 section 4 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. More detailed guidance on the Regulations is available at [the DfE 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 2009](#) (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 head teachers 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 head teacher 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 section 4 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, above, 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 head teachers 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; and
  - 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, above, 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 section 4 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”.

### **WHAT LEGISLATION DOES THIS REFER TO?**

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/1556)

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 2009: SI 2003/1963

The School Standards and Framework Act 1998: Sections 28 and 69

The Education and Inspections Act 2006: Section 166

### **FURTHER SOURCES OF INFORMATION**

Guidance on the School Governance (Federations) (England) Regulations 2007

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

## 6. Governing Body Federation and Collaboration

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## 7 THE EARLY YEARS FOUNDATION STAGE AND THE SCHOOL CURRICULUM

### KEY POINTS

**This section explains what the statutory frameworks for the Early Years Foundation Stage (EYFS) and the school curriculum are and gives details of the roles and responsibilities of the head teacher 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.**

- N.B.** There are different curriculum requirements for Academies and Free Schools which are set out in their Funding Agreement.

A revised, slimmed-down EYFS, which was published on 27 March 2012, will come into force from September 2012 and will replace the existing EYFS. More information about EYFS can be found here:

<http://www.education.gov.uk/schools/teachingandlearning/curriculum/a0068102/early-years-foundation-stage-eyfs>

Until September 2012, the current EYFS will continue to apply, and is summarised below.

### THE EARLY YEARS FOUNDATION STAGE

1. In September 2008 the Early Years Foundation Stage (EYFS) brought together and replaced Birth to Three Matters; the *Curriculum Guidance for the Foundations Stages*; and the *National Standards for Under-8s Day Care and Childminding*. The EYFS 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; and
  - 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.
2. From September 2008 it became mandatory for all schools and Ofsted-registered early years settings to deliver the EYFS to young children who attend the setting. A child is a “young child” for these purposes from birth until the end of the academic

year in which the child has its fifth birthday. The EYFS is given legal force through an Order and Regulations made under the [Childcare Act 2006](#). These are:

*The Early Years Foundation Stage (Welfare Requirements) Regulations 2007 as amended by The Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2008. The Early Years Foundation Stage (Learning and Development Requirements) Order 2007 as amended by The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008.*

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 requirements of the EYFS contained in legislation are:
  - the welfare requirements – these are designed to safeguard children, and ensure the suitability of the childcare offered; and
  - the learning and development requirements – these set out a flexible framework for young children’s learning and development, which places a strong emphasis on meeting children’s individual needs and allows for them to learn and develop at different rates and in different ways.

#### **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, including schools, 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 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. They describe 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 and is based on the needs of individual children.

Assessment arrangements – the EYFS is rooted in play. Assessment in the EYFS is through observation of day-to-day activities. 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 LA, who will use the information to 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. The LA can also 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 DfE website at: <http://www.education.gov.uk/b00197227/about-the-early-years-foundation-stage-eyfs-profile>. 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 DfE website.

### **SCHOOL 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 (which includes work-related learning), religious education (RE), collective worship, sex education, in the case of those being provided with secondary education, and careers education. Section 78 of the Education Act 2002 requires the school curriculum to be balanced and broadly based and:

- to prepare pupils for the opportunities, responsibilities and experiences of life ; and
- to promote pupils' spiritual, moral, cultural, mental and physical development.

Ministers are currently seeking to remove the statutory duty to provide every young person at KS4 (age 14-16) with work-related learning. This will be achieved through primary legislation and will involve, amongst other things, a public consultation and parliamentary debates during 2012. However, schools will still be free to determine whether and how work-related learning, including work experience for young people at KS4, is provided.

The public consultation to remove work related learning at KS4 closed on 6 January 2012 and an analysis of the findings is underway. Recommendations will be made to Ministers during May 2012 and schools will be notified of the final decision.

12. Responsibility for the curriculum is shared between the head teacher, the governing body, LAs and the Secretary of State for Education.

The subjects which must be comprised in the school curriculum are set out in [Sections 84 and 85](#) of the [Education Act 2002](#).

### **National Curriculum Review – background**

13. A review of the National Curriculum was launched in January 2011. English, mathematics, science and physical education will continue to be compulsory at all four key stages. The review is determining which of the other subjects that currently make up the National Curriculum (history, geography, modern foreign languages, art and design, music, citizenship, design and technology and ICT) should remain in the National Curriculum in future, and at which key stages. New Programmes of Study for all subjects will be taught from September 2014. More details about the review, including its remit and organisation can be viewed at [www.education.gov.uk/nationalcurriculum](http://www.education.gov.uk/nationalcurriculum).

## CURRICULUM REQUIREMENTS

14. 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. In addition to the national curriculum (which includes work-related learning), maintained schools must offer religious education, sex education and careers education for specified year groups.
15. The national curriculum provides opportunities for learning to take place across the curriculum. The National Curriculum has three aims. It should enable all young people to become:
- successful learners who enjoy learning, make progress and achieve
  - confident individuals who are able to live safe, healthy and fulfilling lives
  - responsible citizens who make a positive contribution to society.
16. The governing body shares responsibility with the head teacher and the LA for making sure that the curriculum is provided. This responsibility includes making sure that enough teaching time is provided for pupils to cover the national curriculum and other statutory requirements. (Section 14 of this Guide, Behaviour and attendance, gives the current recommended minimum weekly attendance times.) The governing body must also ensure that, in respect of all courses provided for pupils below the age of 19 which lead to qualifications such as GCSEs and A-levels, those qualifications are approved by the Secretary of State. (Details of approved qualifications can be found in the [Section 96 Qualifications](#) area of the DfE website).
17. Governing bodies of maintained schools have a duty to exercise their functions with a view to making sure that the national curriculum and the assessment arrangements are implemented in their school. If the head teacher is temporarily or permanently absent, the governing body should ensure the deputy head teacher or delegated senior member of staff carries out the head teacher's duties as specified in the [Assessment and Reporting Arrangements \(ARA\) booklets](#).

## STAGES OF THE CURRICULUM

18. 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**

19. 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 and economic (PSHE) education	+	+	+	+

**REQUIREMENTS AT KEY STAGE 4**

20. The Key Stage 4 statutory requirements are as follows:
- a small group of compulsory subjects, comprising English, mathematics, science, ICT, citizenship, PE, sex education and RE ( which is also compulsory in the sixth form);
  - compulsory elements, namely work-related learning and one or more of the four entitlement areas, comprising the arts, design and technology, humanities and modern foreign languages;
  - careers education;
  - entitlement to have access to a course of study in science leading either to two separate GCSEs, in science and Additional Science, or three separate GCSEs in physics, chemistry and biology.

Guidance and information on Key Stage 4 can be found on the DFE website <http://www.education.gov.uk/schools/teachingandlearning/curriculum/b00200366/about-the-school-curriculum/what-is-statutory>

## ASSESSING ACHIEVEMENT

21. 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 it consists of teacher assessment, informed by statutory tests and tasks; at Key Stage 2, teacher assessment and national curriculum tests, and at Key Stage 3, teacher assessment only. At the end of Key Stage 4, pupils generally take public examinations, for example GCSEs. In the academic year 2011/12, there will be a new statutory assessment at Key Stage 1. Schools will be required to administer a phonics screening check to their pupils at the end of the first year of Key Stage 1. An amendment to the statutory Order setting out KS1 assessment arrangements has been made.
22. 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. For each national curriculum subject there are 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\*.
23. Teachers are required to carry out an assessment 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, teachers are also required to carry out an assessment of pupils' progress in the other national curriculum subjects. Teacher assessments are judgements of the level of attainment achieved by the pupil for each attainment target, 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".
24. 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. A phonics screening check at the end of Year 1;
  - Key Stage 2 – teacher assessment in English, mathematics and science; national curriculum tests in English reading and mathematics, and testing of pupils in a sample of schools in science. From 2012, English writing will be assessed by teachers, informed by internally or externally marked tests. A small number of schools will also be required to administer the externally marked test as part of a sample test in writing in 2012. A sample of schools' teacher assessment judgments in writing will also be subject to light-touch external moderation. A new test of spelling, punctuation, grammar and vocabulary will be introduced from 2013;
  - 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.

For full information and guidance please refer to the ARAs (available at <http://www.education.gov.uk/schools/teachingandlearning/assessment/a00197251/assessment-and-reporting-arrangements>).

25. The head teacher 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.)
26. LAs are responsible for monitoring the administration of statutory assessment by schools. The head teacher and governing body must provide access to the school's premises and records for the LA staff undertaking monitoring visits.

#### **Annual reports to parents**

27. Prior to the end of the summer term of each school year, Head teachers of maintained schools are responsible for preparing and providing parents of all children in the Reception Year and above with a written report on their child's achievements. The information to 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).

#### **Publishing School Performance Information**

28. Schools must publish whole-school results from Key Stages 1–3. These may be included with information given in the School Profile. The DfE also publishes national analyses of the results. See section 26 of this Guide (Providing information).
29. The head teacher must send the EYFSP results to the LA. The governing body must send teacher assessment results for Key Stage 1 to the LA (or, in the case of Academies and Free Schools, the LA or another accredited provider). We will also expect the results of the new phonics screening check to be sent to LA. Key Stages 2 and 3 results must be sent to the STA. The LA collects the EYFSP, Year 1 phonics screening check and Key Stage 1 results and sends them on to the DfE. See section 26 of this Guide (Providing information).

#### **Home-school agreements**

30. Under Sections 110 and 111 of the [School Standards and Framework Act 1998](#), the governing body of every maintained school, and Academy, is required to have in place a written home-school agreement. The Department has recently revised the statutory guidance which schools need to be mindful of when drafting their agreements. This guidance can be accessed at <http://www.education.gov.uk/schools/pupilsupport/parents/involvement/hsa>

#### **POLITICAL BIAS**

31. The governing body, head teacher 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, head teacher 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. At present, under regulation 8 of the [Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000](#), governing bodies and head teachers have functions in relation to the preparation of a policy for the school curriculum. **This duty is being lifted from September 2012.** If schools choose to adopt such a policy, it should be “broad brush” – it is not intended for this policy to be a detailed map of all

secular curriculum activities.

### **SEX EDUCATION**

33. Governing bodies and head teachers 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 must 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 sex education and make it available to parents. The LA, governing body and head teacher should also make sure that any SRE is embedded in Personal, Social, Health and Economic (PSHE) education 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 sex education provided (but not from the biological aspects of human growth and reproduction necessary under the national curriculum for science).
37. Head teachers and governors are required to take reasonable steps to secure that where sex education is given it is given in such a way as to encourage pupils to have regard to moral considerations and the value of family life. In exercising this function, head teachers and governors must have regard to the statutory guidance (see the Guidance section for more information).

### **Guidance on Sex and Relationships Education**

38. The DfEE issued statutory guidance on SRE to all maintained schools in July 2000. Schools must have regard to the guidance and ensure that where sex education is given it is given in such a way as to encourage pupils to have regard to moral considerations and the value of family life. The SRE guidance is being considered as part of the Department's review of personal social health and economic (PSHE) education. Outcomes from the PSHE Review are expected in autumn 2012.

### **DRUG EDUCATION**

39. In December 2010 the Government published a drug strategy which places a clear emphasis on preventing drug misuse amongst young people and intervening early with those who start to develop problems. Drug education is a key part of this.
40. 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.
41. Drug education should be delivered through well-planned 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.
42. 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 DfE has worked with the Association of Chief Police Officers to develop [Drug Advice for Schools](#) which can be found on the DfE publications website. The advice supports schools in dealing with drugs and preparing a drugs policy.

### CAREERS EDUCATION AND GUIDANCE

43. 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 7–11 ([Section 43 of the Education Act 1997](#)). There is no prescribed programme of study for careers education, but a national non statutory framework for careers education and guidance for 11 to 19 year olds is in place. Each secondary school must also provide pupils with access to guidance materials and up-to-date reference materials on careers and post-16 progression opportunities ([Section 45 of the Education Act 1997](#)).
44. From September, these duties will be repealed and the Education Act 2011 will place schools under a new duty to secure access to independent and impartial careers guidance on the full range of 16-18 education and training options, including Apprenticeships. This new requirement will apply to pupils in year 9-11 and government will shortly consult on extending the new duty down to pupils in year 8 and up to young people aged 16-18 studying in school and further education settings.
45. While complying with the requirement to secure careers guidance from an external source, schools will be free to make arrangements for careers guidance that fit the needs and circumstances of their pupils and will be expected to work, as appropriate, in partnership with external and expert careers providers.
46. Statutory guidance was published in March to support schools in planning for the introduction of the new duty ([DfE Statutory Guidance on Careers](#)). This is issued under section 45A of the Education Act 1997 and schools must have regard to it. The statutory guidance sets a clear expectation is set that schools should secure access to independent, face-to-face careers guidance where it is the most suitable form of support, particularly for the disadvantaged.

### RELIGIOUS EDUCATION

47. All maintained schools must provide RE for their pupils. Foundation, voluntary controlled schools and voluntary aided schools have a religious character if they are designated as such by an order made by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998.
48. In community schools and all foundation and voluntary schools without a religious character, RE will be taught in accordance with the locally agreed syllabus which is the responsibility of the local authority. It is drawn up by a local conference called an Agreed Syllabus Conference (ASC), comprising teachers, local churches, faith groups and the LA. The conference is advised by Standing Advisory Councils on Religious Education (SACREs), which comprise the same groups. The head teacher



shares responsibility with the LA and the governing body for making sure that the RE requirements are met.

49. 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.
50. Parents have the right to withdraw their children from all or part of any maintained school's RE provision and schools should make them aware of this right. 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.

#### **Voluntary aided schools with a religious character**

51. 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 made by the Secretary of State.
- VA
52. Where parents ask for RE to be provided for any pupils according to the locally agreed syllabus, and it is not convenient for the pupils 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.
- VA

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

53. 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 a trust deed, in accordance with the beliefs of the religion or denomination specified in the order made by the Secretary of State in relation to the school. 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 head teacher shares responsibility with the LA and the governing body for making sure that the RE requirements are met.
- VC

#### **COLLECTIVE WORSHIP**

54. All maintained schools must provide a daily act of collective worship for their pupils. The precise nature of the collective worship at a foundation or voluntary school will depend on whether the school has been designated as having a religious character by an order of the Secretary of State under section 69(3) of the School Standards and Framework Act 1998.
- VA  
VC  
F
55. 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, sixth-form pupils, as defined in [Section 71\(8\) of the Schools Standards and Framework Act 1998](#), who have withdrawn themselves). Parents have the right to withdraw their children from all or part of attendance at worship and the school should make them aware of this right. They are not obliged to give a reason.
56. For community schools and foundation schools without religious character, the head teacher is responsible for arranging the daily collective worship after consulting with the governing body. 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. For voluntary schools and foundation schools with a religious character, the governing body is responsible for arranging daily collective worship after consulting with the head teacher.
- VA  
VC  
F

57. 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 head teacher and governing body feel that a broadly Christian act of worship is not suitable. In these circumstances, the head teacher can apply to the local SACRE to have the broadly Christian content requirement lifted. Before doing so, the head teacher should consult the governing body of the school and they may consult the parents of pupils at the school.

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

58. 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.

VA  
VC  
F

#### **CIRCUMSTANCES WHERE THE NATIONAL CURRICULUM MAY NOT APPLY**

59. The national curriculum offers schools considerable flexibility to develop their curriculums to meet the needs of the majority of pupils, for example enabling programmes of study to be modified to suit a pupil's needs. In exceptional circumstances, where a head teacher is of the opinion that a pupil is unable to follow the national curriculum, he or she may consider that some or all of the national curriculum should be disapplied, 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.  
<https://www.education.gov.uk/publications/eOrderingDownload/DFES-00224-2006.pdf>
60. 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](#);
  - where a pupil's statement of SEN includes provision excluding or modifying the application of the National Curriculum.

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](#).

61. 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

62. Under temporary disapplication, the head teacher will issue either a special or a general direction for up to six months. Within three working days of the direction being given, the head teacher 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 ask the head teacher to vary or revoke a direction and can appeal to the governing body if the head teacher refuses to do so. 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.

### Disapplication through a statement of special educational needs

63. 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

64. 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.
65. The application to the Secretary of State may be made by:
- in relation to community and voluntary controlled schools:
- the governing body (with LA agreement)
  - the LA (with governing body agreement)
- in relation to foundation or voluntary aided schools:
- the governing body.
66. Further details are available in the [Disapplication of the National Curriculum \(Revised\)](#).

### COMPLETING KEY STAGE 4 REQUIREMENTS EARLY

67. 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. Decisions about the staging of learning are for the Head teacher to make, taking account of the needs of the pupil in order to help them to achieve their best. Research information on early entry to GCSEs has been [published on the Department's website](#).

## COMPLAINTS ABOUT THE CURRICULUM

68. All LAs have to set up procedures 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.

**Section 45 of the Education Act 2011 removes this duty from local authorities. Once that provision is commenced at the end of July 2012 complaints about these issues should be addressed, like other general complaints about schools, to the Secretary of State for Education.**

69. 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.

## WHAT LEGISLATION DOES THIS REFER TO?

### Education Acts

The Education Act 2002: Part 6

The Education Act 1996: Part 5

The Education Act 1997: Parts 4 and 7

The 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 Art and Design) (England) Order 2000: SI 2000/1602

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (England) Order 2000: SI 2000/1605

The Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (England) Order 2000: SI 2000/1606

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 in respect of the First, Second, Third and Fourth Key Stages) (England) (No 2) Order 2004: SI 2004/1800

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Design and Technology in respect of the First, Second and Third Key Stages) (England) (No 2) Order 2004: SI 2004/1794

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 2000/1601

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 2008/1758

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**

### **Early Years Foundation Stage**

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

The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008, SI 2008/1952

### **National Curriculum Assessments**

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

The Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) (Amendment) Order 2011: SI 2011/3057

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 Stages 2 and 3 Assessment Arrangements) (England) (Amendment) Order 2009 SI 2009/1585

The Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) (Amendment) Order 2010 SI 2010/290

The Apprenticeships, Skills, Children and Learning Act 2009, Parts 7 and 8 (Consequential Amendments) Order 2010, SI 2010/677, which amends all three Assessment Arrangements Orders

The Education (National Curriculum) (Key Stages 1, 2 and 3 Assessment Arrangements) (England) (Amendment) Order 2011 SI 2011/2392

The Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) (Amendment) Order 2008, SI 2008/3081

### **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 2007/1771

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

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

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

## **FURTHER SOURCES OF INFORMATION**

### **Early Years Foundation Stage**

[Early Years Foundation Stage Statutory Framework and Practice Guidance](#)

Copies of the full support pack are available from

<http://www.education.gov.uk/schools/teachingandlearning/curriculum/a0068102/early-years-foundation-stage-eyfs>

Early Years Foundation Stage and Key Stage 1 Assessment and Reporting Arrangements. Copies can be accessed on the DfE website at:

<http://www.education.gov.uk/b00197227/about-the-early-years-foundation-stage-eyfs-profile>.

[Early Years Foundation Stage Profile: Handbook](#)

Copies can be obtained via DfE, <http://www.education.gov.uk/b00197227/about-the-early-years-foundation-stage-eyfs-profile>.

### **National curriculum documents**

Copies of the National Curriculum Handbooks for primary and secondary schools can be found on the DfE 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).

The Early Years Foundation Stage Profile, Key Stage 1 and Key Stage 2 assessment and reporting arrangements document are sent to all schools every autumn, they are also available on the DfE website.

The Key Stage 3 Teacher assessment and reporting arrangements document (TARA) is made available to all maintained schools (independent schools choosing to submit teacher assessment and P scale data). The TARA sets out statutory arrangements and provides information and guidance on teacher assessment for Key Stage 3.

The TARA can be found on the DfE website.

The new year 1 phonics screening check assessment and reporting arrangements document has been sent to relevant schools in spring 2012. It sets out statutory arrangements and provides information and guidance for the phonics screening check, and is available on the DfE website.

Sex and Relationship Education Guidance (DfEE 0116/2000).

DfE guidance and documents are available on its website, or through the publication line (tel: 0845 602 2260).

## 7. The Early Years Foundation Stage and the National Curriculum

Subject orders and regulations are available on the National Archives website or via the publication line (tel: 0870 600 5522).



## 8 CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND OTHER VULNERABLE CHILDREN

### KEY POINTS

**This chapter deals with the provision of 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 section.**

### OVERVIEW OF RELEVANT LEGISLATION

1. Special education has never been a matter reserved just for special schools. The needs of the majority of pupils with special educational needs (“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 Education 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 when exercising their functions in relation to children with SEN. In addition, the [Special Educational Needs and Disability Act 2001](#) amended the Education Act 1996 to strengthen the right to a mainstream education for pupils with SEN, and introduce statutory information and advice for parents of children with SEN, and informal dispute arrangements.
3. Schools and their governing bodies have an important role to play in supporting LAs to discharge their duty under [Section 22\(3A\) of the Children Act 1989](#) to promote a looked-after child's educational achievement.
4. The Children and Young Persons Act 2008 requires the governing body of a maintained school to appoint a member of staff to promote the educational achievement of looked-after children who are on the school roll. The governing body must also ensure that they receive appropriate training. Supporting regulations require that the designated person must meet a number of requirements, including being a qualified teacher, head teacher or acting head teacher.

### DEFINITIONS

5. 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 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 require special educational provision are not only those with obvious difficulties, such as those who are physically disabled, deaf or blind, they also 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.

6. Special educational provision can be made in many different ways. It could mean extra help for a child being taught in a standard class, or teaching the child in a specially resourced unit attached to a mainstream school, or in a special school. The great majority of children with SEN (around 18% of the school population) have their SEN met from within the resources normally available to a mainstream school or with some outside help but 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 and draw up a “statement” of special educational needs.
7. Under the Children Act 1989 a child is looked after by an LA if they are (i) in the care of the LA by virtue of a care order (section 31) or an interim care order (section 38), or (ii) provided with accommodation by the LA by voluntary agreement with their parents for more than 24 hours (section 20), or (iii) subject of an emergency protection order for their own protection (Section 44).

### ASSESSMENTS

8. 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. The parents of a child can ask the LA to arrange for an assessment. Schools may also ask the LA to assess a child whom they think may need a statutory assessment. The LA has six weeks from the date the request is received to consider whether a statutory assessment is necessary. At the end of this period it must inform the parents of its decision.
9. Guidance on 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

10. 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, an independent or non-maintained special 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.
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11. All advice received and taken into consideration during the assessment, including parental, educational, medical and psychological advice must be attached to the proposed statement.
12. The proposed statement must be completed, except for Part 4, which should be left blank, so that parents have the option to 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 provision of efficient education of other children at the school in question;
  - the placement would affect the efficient use of resources.
13. 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.
14. Parents can make representations for a placement outside the maintained sector. The LA must consider parents' representations before making a decision about which school to name in a pupil's statement.
15. 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.
16. 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, including 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.
17. As part of the review process, the LA must keep under review 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 provision of efficient education to other children.

## APPEALS

18. 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

19. The First-tier Tribunal (Special Educational Needs and Disability) (SEND) can hear parents' appeals against LA decisions about children's SEN. Parents can appeal to the tribunal against a decision by the LA:
  - not to carry out an assessment;

- having carried out an assessment, not 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 provision (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;
- 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;
- decides not to amend the statement following a review.

20. The First-tier Tribunal (SEND) 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 list of resources, below).

### **Disability discrimination in schools**

21. The First-tier Tribunal (SEND) can hear parents' claims about disability discrimination in schools. For all types of schools including Academies and Pupil Referral Units (PRUs), the First-tier Tribunal handles discrimination claims about fixed-term (temporary) exclusions, permanent exclusions, and education and benefits, and facilities 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. From September 2012, the First-tier Tribunal will also be able to consider disability discrimination claims relating to permanent exclusions from maintained schools, Academies and PRUs.
22. The First-tier Tribunal (SEND) has produced 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**

23. The governing body should decide, with the head teacher, the school's general policy and approach to meeting children's SEN, including those with and without statements. 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](#).
24. For community, foundation or voluntary schools or maintained nursery schools ("mainstream schools"), the governing body may also appoint a committee to monitor the school's work for children with SEN.
25. In summary, governing bodies of mainstream schools have legal duties under the Education Act 1996 to:
- use best endeavours in exercising their functions to ensure that the

- necessary special education provision is made for any pupil who has SEN;
- ensure that parents are notified by the school when special educational provision is being made for their child, because it is considered that he or she has SEN;
- make sure that the responsible person makes all staff who are likely to teach the pupil aware of the pupil's special educational needs;
- make sure that the teachers in the school are aware of the importance of identifying pupils who have SEN and of providing appropriate teaching;
- designate a member of staff at the school (to be known as the "special educational needs co-ordinator") as having responsibility for co-ordinating the provision for pupils with SEN;
- consult the LA and the governing bodies of other schools when it seems necessary to co-ordinate special educational teaching in the area;
- ensure that pupils with SEN join in the everyday activities of the school together with children without SEN, as far as is compatible with: them receiving the necessary special educational provision; the provision of efficient education for all other pupils; and the efficient use of resources;
- 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 head teacher, 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 head teacher, it may be helpful for one other governor to have an interest in SEN.

26. In summary, governing bodies of community, foundation or voluntary schools, maintained nursery schools, and community or foundation special schools have legal duties under the Education Act 1996 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 in a mainstream school tells all staff likely to teach the pupil in question about his or her special needs (the person can be the head teacher, 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.
27. 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)**

28. The new School Admissions Code (the Code) that came into force in February 2012<sup>3</sup> makes clear that all children whose statement of SEN names the school must be admitted. If the school is not oversubscribed, all applicants must be offered a place (with the exception of designated grammar schools.) Admission authorities must ensure that their arrangements will not disadvantage unfairly, or discriminate against

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<sup>3</sup> The Codes are supported by the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

a child with a disability or special educational needs. The Code applies to all maintained schools in England. Academies, which include Free Schools, are required by their Funding Agreement to comply with the Code and the law relating to admissions. The Code can be found at:

<http://www.education.gov.uk/schools/adminandfinance/schooladmissions/a0019-current-codes-and-regulations>

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

29. Parents have the right of appeal to the First-tier Tribunal (SEND) 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 provision that the LA thinks the child should receive (Part 3). Governing bodies do not have a right of appeal to the First-tier Tribunal. Parents can also use the less formal dispute resolution arrangements to resolve issues about the ways in which LAs and maintained schools carry out their responsibilities towards their child (Section 332B of the Education Act 1996).
30. If no parental preference for a particular maintained school has been expressed, [Section 316 of the Education Act 1996](#) is relevant to the selection of a school. It requires that all children without a statement must be educated in a mainstream school, and creates a presumption that a child with a statement should be educated in a mainstream school unless this is incompatible with the provision of efficient education for other children or with the wishes of the parent. 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 provision of efficient education for other children.
31. If an LA considers that the education of a particular child in a mainstream school would be incompatible with the provision of efficient education for 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 section 13 of this Guide, Admissions.)

### **Admission to special schools**

32. 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.

33. Before naming a special school in a statement, LAs must consult the school's governing body (and the relevant 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.
34. Pupils may only be admitted to a special school established in a hospital where there is a need for hospital treatment.

### **Special school organisation**

35. The number of pupils for which a school is organised to make provision can be increased by the fewer of: 10 per cent of the total number of pupils, 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. 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**

36. Section 317 of the Education Act 1996 (as amended by [Section 173](#) of the Education and Inspections 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 co-ordinator (“SENCO”) – as having lead responsibility for co-ordinating the provision for pupils with SEN and disabilities. The requirement also extends to Academies, Free Schools and Studio Schools through their funding agreements.
37. Whilst some of the functions associated with the SENCO may be undertaken by other members of staff, including teaching assistants, the [Education \(Special Educational Needs Co-ordinators\) \(England\) Regulations 2008](#), require that the lead person designated by the governing body as SENCO shall be either a qualified teacher at the school, or the head teacher or acting head teacher.
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 head teachers or acting head teachers 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 Education \(Special Educational Needs Co-ordinators\) \(England\) \(Amendment\) Regulations 2009](#) require governing bodies to ensure that any newly qualified SENCO (defined as within 12 months of becoming a SENCO) gains a nationally approved training qualification, known as the “National Award for Special Educational Needs Co-ordination” within three years of appointment.
40. Experienced SENCOs (those in post for more than a year) who are simply transferring schools are not subject to the requirement. For example, a SENCO who takes a career break and returns to be a SENCO again (even in another school)

wouldn't need to get the national SENCO award if they could demonstrate that they had previously fulfilled the lead SENCO role for more than a year at a relevant school.

41. All teachers in mainstream schools can be expected to teach pupils with SEN and disabilities. The SEN Code of Practice makes it clear that meeting the needs of pupils with SEN and disabilities is a matter for the school as a whole. To be awarded Qualified Teacher Status trainee teachers must demonstrate that they meet all of the professional standards relating to QTS, including teaching pupils with SEN and disabilities. A wide range of continuing professional development opportunities at all levels are available to help teachers, an non-teaching staff, develop their skills in relation to specific types of SEN, such as autism or dyslexia. Governing bodies are strongly encouraged to ensure that their staff have the skills needed to meet the needs of their pupils.

### **NATIONAL CURRICULUM**

42. The national curriculum applies to pupils with SEN, but may be changed or not applied in specific cases (as explained in section 6 of this Guide, Governing Body Federation and Collaboration). 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**

43. 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.
44. 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.

### **LOOKED AFTER CHILDREN**

#### **School admissions**

45. Looked after children and children who leave care under an adoption, special guardianship or residence order (referred to as '**previously looked after children**') in the School Admissions Code must be given the highest priority in a school's oversubscription criteria.



46. Section 97A of the School Standards and Framework Act 1998 gives the local authority that looks after a child 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 local authority area.

#### **The designated teacher**

47. Under the [Children and Young Persons Act 2008](#), and the [Designated Teacher \(Looked After Pupils etc.\) \(England\) Regulations 2009](#) governing bodies of all maintained schools are required to appoint a designated teacher to promote the educational achievement of looked after children who are on the school roll. Academies and free schools are under an obligation to do this through their funding agreements. Statutory guidance on the roles and responsibilities of designated teachers can be found [here](#).

Governing bodies must as a minimum ensure that:

- a designated teacher is appointed; and
- they undertake appropriate training;

Regulations specify that the role should be carried out by:

- a qualified teacher, within the meaning of Section 132 of the Education Act 2002, who has completed the appropriate induction period (if required); or
- the head teacher or acting head teacher at the school; or
- a person who has been doing the job of designated teacher for six months prior to 1st September 2009 and who is training to be a teacher and likely to qualify before 1 September 2012.

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

48. Section 22(3A) of the Children Act 1989, places a duty on local authorities to promote the educational achievement 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.
49. [Statutory Guidance on the Duty of Local Authorities to Promote the Educational Achievement of Looked after Children](#) describes the essential actions that local authorities are expected to take in order to comply with their duty.
50. It is expected that schools and the local authority will take a proactive approach to co-operating in discharging their duties, so that looked after children receive the support that they need to achieve and succeed. It is important that the local authority ensures that designated teachers have an up-to-date copy of the looked after child's Personal Education Plan (PEP) and that it is reviewed at regular intervals. The PEP forms part of his or her education record under the [Education \(Pupil Information\) \(England\) Regulations 2005](#).

### **CHILDREN ADOPTED FROM CARE AND THOSE ON SPECIAL GUARDIANSHIP AND RESIDENCE ORDERS**

#### **School admissions**

51. Children who ceased to be looked after because they were adopted<sup>4</sup> or became subject to a residence order or special guardianship order must along with looked after children, with some limited exceptions as set out in the School Admission Code, be given the highest priority in a school's oversubscription criteria.

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<sup>4</sup> Under the terms of the Adoption and Children Act 2002. See Section 46 (adoption orders).

## SICK CHILDREN

52. 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, PRUs, 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.
53. The Department for Education is currently consulting on reforms to implement Charlie Taylor's Review of alternative provision. The consultation also covers new guidance including statutory guidance on the education of children with medical needs which replaces previous guidance on this issue (*Access to Education for Children with Medical Needs*). The consultation closes on 15 May and the guidance will be published in the summer.

## MENTAL HEALTH IN SCHOOL SETTINGS

54. 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 along with the cross-Government Mental Health Strategy, [No Health without Mental Health](#), which also includes case studies (the guidance and a summary are available on the children and young people's mental health pages on the Department for Education and Department of Health websites).

In addition, further evidence and case studies around children's mental health which schools may find helpful can be found below:

- [Targeted Mental Health in School Project – using evidence to inform your approach: a practical guide for head teachers and commissioners 2008](#) (link to PDF document)
- [Guidance on commissioning targeted mental health and emotional wellbeing services in schools 2010](#)
- [Common mental health problems: Supporting school staff by taking positive action 2008](#)

Governors may also want to be aware of:

- the guidance around [Transitions in Mental Health Care](#) – A guide for health and social care professionals on the legal framework for the care, treatment and support of young people with emotional and psychological problems during their transition years;
- a new online community <http://www.learning-exchange.org.uk/> that is bringing together VCS and education professionals working on after school clubs and activities; and
- The IDEA has published '20 mental health and wellbeing must knows for Local Authorities' <http://www.idea.gov.uk/idk/core/page.do?pagelId=33548410>.

## **DISABILITY DISCRIMINATION**

55. The definition of disability used in the [Equality Act 2010](#) is wide and could include a significant proportion of, although not all, children with SEN (see section 18 of this Guide, Equalities).
56. The [Equality Act 2010](#) replaced all existing equality legislation including the [Disability Discrimination Act 1995](#). The disability provisions in the Equality Act replicate those duties the Disability Discrimination Act placed on LAs and schools not to discriminate against disabled pupils or prospective pupils on the grounds of disability and to plan to increase access to education for disabled pupils over time (see section 18 of this Guide, Equalities).
57. The Equality and Human Rights Commission (EHRC), have produced a guide for schools on meeting the requirements of the Equality Act (see the list of resources, below).
58. The Department intends to commence the new requirement for schools to provide auxiliary aids and services for disabled pupils, as part of the reasonable adjustments duty under the Equality Act 2010, from September 2012. The Department plans to revise its guidance for schools on what the Equality Act means for them to specifically cover this new duty, alongside further information on how to comply with the duty being made available by the Equality and Human Rights Commission, by the time the duty is commenced.

## **WHAT LEGISLATION DOES THIS REFER TO?**

[The Education \(SENCO\) \(England\) Regulations 2008 \(SI 2008/2945\)](#)

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

### **Associated resources**

[The Equality Act 2010](#)

[The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001: SI 2001/3455 \(as amended by The Education \(Special Educational Needs\) \(England\) \(Consolidation\) \(Amendment\) Regulations 2006: SI 2006/3346 and the Education \(Special Educational Needs\)\(England\)\(Consolidation\)\(Amendment\) Regulations 2007:SI2007/1860\)](#)

[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](#)

[The Children and Young Persons Act 2008: Section 20](#)

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[The Designated Teacher \(Looked After Children etc.\) \(England\) Regulations 2009](#)

[The Education \(Special Educational Needs Co-ordinators\) \(England\) Regulations 2008:2008/2945 \(as amended by the Special Educational Needs Co-ordinators\) \(Amendment\) \(England\) Regulations 2009: SI 2009/1387\)](#)

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## **FURTHER SOURCES OF INFORMATION**

[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)

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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 the DfE website

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)

EHRC guidance for schools on meeting Equality Act duties

Departmental guidance for schools on the Equality Act

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: 00342-2010BKT-EN: copies can be downloaded from the [here](#))

The role and responsibilities of the designated teacher for looked after children: Statutory guidance for School Governing Bodies (DfES 2009, Ref: 01046-2009BKT-EN: copies can be downloaded from the [Department's Children in Care website](#))

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

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

## 9 THE SCHOOL BUDGET

### KEY POINTS

**This section outlines the way in which Local Authorities (LAs) receive and distribute funding for their maintained 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

#### The Schools Budget

1. The vast majority of schools' income comes via a central government grant paid to Local Authorities (LAs). This is called the Dedicated Schools Grant (DSG). The DSG is paid to LAs (not directly to schools) as they have responsibility for the distribution of funding to individual maintained schools in their local area.
2. The size of an LA's Schools Budget must be at least that of the DSG plus any funding an LA receives from the Education Funding Agency (EFA) for post-16 provision in maintained schools. However, LAs are able to add from their own locally raised resources if they choose to.
3. The types of activity or expenditure that resources in the Schools Budget can support are prescribed by Regulations (currently the School Finance (England) Regulations 2012). Included within this is all direct educational provision in an LA's maintained schools and in the private, voluntary and independent sector delivering the free entitlement to early years provision for three- and four-year-olds, but also centrally funded expenditure relating to pupil referral units and special educational needs provision.
4. 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. The Schools Forum is able to agree to relax or vary some of these limits. Where the Schools Forum does not agree with the LA's proposal, the LA can ask the Secretary of State to approve the proposal.

The balance of the Schools Budget left after deduction of the centrally retained budget is termed the Individual Schools Budget (ISB).

5. Expenditure outside the schools budget is part of general local government funding and is funded through a combination of central government grant and local taxation. The main services outside the schools budget of interest to governors are the LA's strategic management functions relating to schools, home to school transport, special educational needs assessment, the education welfare service, children's centres, youth services and children's social care.

#### Local Funding Formula

6. LAs are required to calculate the budgets of all schools maintained by them using a funding formula. Each LA's formula 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. The formula is governed by the School Finance (England) Regulations 2012 which set out the factors which LAs can use.

7. Most funding is distributed through pupil numbers, using the annual January pupil count immediately preceding the financial year. Other factors can include those for social deprivation, special educational needs, premises costs, small school support and flat rate lump sums.
8. There is a separate formula (the Early Years Single Funding Formula) to fund the free entitlement for three and four year olds across maintained nursery schools and classes, and private, voluntary and independent early years settings.
9. 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 under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998 or section 66 of the Education and Inspections Act 2006. The financial controls within which delegation works are set out in the LA's Scheme for Financing Schools (the "Scheme").
10. Under Section 251 of the Apprenticeships, Skills, Children and Learning Act 2009 each LA is required to publish a statement setting out details of its planned spending on education, and its formula, each year. This includes the detailed calculation for each school. After each financial year, the LA 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 is collated and published by the Secretary of State. The LA's chief financial officer also has to certify that the DSG has been deployed properly after the end of the financial year.
11. It is a statutory duty that LAs must publish their budget and outturn statements under Section 251 of the Apprenticeships, Skills, Children and Learning Act 2009. A copy of the budget and outturn statements must be made available to each school maintained by the authority, to the general public and published on their website.
12. Schools are also obliged to submit annual income and expenditure returns to the Secretary of State in conformity with the Consistent Financial Reporting (England) Regulations 2003.

#### **What the school budget can be spent on**

13. Schools with a delegated budget may spend budget shares for "the purposes of the school" as stated in [Section 50\(3\)\(a\)](#) of the School Standards and Framework Act 1998 (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 in Regulations made under [Section 50\(3\)\(b\)](#) of the SSFA.
14. [Section 50\(3\)](#) of the 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."
15. The phrase "for any purposes of the school" is not defined. However, the [School Budget Shares \(Prescribed Purposes\) Regulations 2002](#) made under section 50(3)(b) additionally allow spending for the purposes of pupils in other schools. In addition to what may be spent under Section 50(3) of the SSFA, Section 50(3A) enables governing bodies to spend amounts of their delegated budget on providing community facilities or services under Section

27 of the Education Act 2002 – which by virtue of section 50(3A) is treated as if spent for the purposes of the school.

16. 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.

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

17. [Schedule 15](#) to the SSFA provides that the LA may suspend a school's right to a delegated budget where a school's governing body has persistently or substantially breached a requirement or restriction relating to its delegated budget, has not managed its budget share satisfactorily or has not managed satisfactorily its expenditure or sums received in the exercise of its power to provide community facilities and services under section 27 of the Education Act 2002. The notice must specify the grounds for the suspension and the LA must give the notice to the governing body and give the head teacher a copy of the notice at the same time. The LA is required to review the suspension within a certain period (or may do so earlier if it wishes).
18. The principal effects of suspension of the right to a delegated budget are 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 of its staffing powers. An LA may also suspend a school's 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.
19. 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.

#### **Schools Forums**

20. Each local authority must have a Schools Forum under section 47A of the SSFA. Its role is primarily as a consultative body, to advise its local authority on the operation of the local Schools Budget (including how much can be retained centrally by the LA), and its distribution of funding among schools and early years providers via the local funding formulae. The Schools Forum does have some limited powers to make decisions, mainly in relation to what the LA is planning to spend centrally within its schools budget.
21. The Schools Forum consists of members elected by local head teachers, school governors and Academies to represent them, and additional non-schools members to represent other relevant interests, such as private, voluntary and independent early years providers, the local 14-19 partnership and diocesan authorities. The Schools Forum (England) Regulations 2010 set out the required membership for Forums. Primary, secondary and Academies members should have representation on the forum which is broadly proportionate to the pupil numbers in each category. Maintained special and nursery schools must be represented if there is at least one of either in the LA.

22. The balance between head teachers and governors on the forum is a matter for local decision.

### **Scheme for Financing Schools**

23. LAs are required under Section 48(1) of the SSFA to maintain a Scheme for Financing Schools (the “Scheme”) that sets out 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.
24. Schedule 14 to the SSFA provides that the LA may revise the whole or part of the Scheme and must consult the governing body and head teacher of every school maintained by the LA on any proposal to revise the Scheme before submitting a copy of their proposal to the Schools Forum for their approval. The LA must publish the Scheme, including any revision, on a website which is accessible to the public, and each school should receive a copy of the Scheme and any revision.
25. The Scheme should clearly contain requirements relating to financial management and associated issues, binding for both the LA and the school, The School Finance (England) Regulations 2011 state what matters must be covered in schemes – these include the carry forward of surpluses and deficits, banking arrangements, insurance, audit, charging of school budgets. The Department for Education has statutory guidance on its website.

### **Liability of governing bodies**

26. 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 in delegating that power to the head teacher. An example of an act not done in good faith is fraud.

### **Insurance**

27. Insurance Cover - the LA’s duty to maintain the school includes meeting the cost of insurance. Although there are various categories of insurance, the principal items relate to the protection of buildings and liability insurance. The LA will either pay for such insurance from central funds or it may include funding for this in the school’s delegated budget. A school may then either buy back into an LA arrangement or make alternative provision. There is no requirement that the amount delegated should exactly match the cost of securing insurance. Where funding is retained centrally, 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.
28. 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.
29. 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. 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.

30. 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.

### **Efficiency and Value for Money**

31. All schools have a responsibility to improve the efficiency with which they use resources. They should use their resources in the best way possible to provide a high quality teaching and learning environment for all their pupils.
32. LAs have a responsibility under their general duty to secure value for money to support schools in planning their budgets, spending their funds prudently and looking to optimise the use of their resources to invest in teaching and learning.
33. For more information on efficiency and value for money please visit the DfE website: <http://www.education.gov.uk/schools/adminandfinance/financialmanagement/b0069984/vfm>

### **Schools Financial Value Standard (SFVS)**

34. The SFVS is a replacement for the Financial Management Standard in Schools (FMSiS) which was abolished in November 2010. SFVS is a much simpler version concentrating on the key elements of financial management and efficiency. It is aimed mainly at governors because they are formally responsible for financial management in their schools. SFVS provides governing bodies with real assurance that schools are managing their finances effectively and achieving value for money.
35. The standard consists of 23 questions which governing bodies should formally discuss annually with their head teacher and senior staff. There is no prescription of the level of evidence that the governing body should require. The important thing is that governors are confident about their responses.
36. The questions which form the standard are in sections A to D. Each question requires an answer of Yes, In Part, or No.
- if answer is Yes, the comments column can be used to indicate the main evidence on which the governing body based its answer
  - the answer is No or In Part, the column should contain a very brief summary of the position and proposed remedial action
37. In Section E, governors can summarise remedial actions and the timetable for reporting back. Governors should also ensure that each action has a specified deadline and an agreed owner. The school must send a copy of the signed standard to their local authority's finance department.
38. Unlike FMSiS, the SFVS will not be externally assessed. LAs will use their schools' SFVS returns to inform their programme of financial assessment and audit. LA and other auditors will have access to the standard, and when they conduct an audit can check whether the self-assessment is in line with their own judgement. Auditors should make the governing body and the LA aware of any major discrepancies in judgements.
39. LA maintained schools which had not attained FMSiS by the end of March 2010 must complete and submit the SFVS to their local authority by 31 March 2012; and

conduct an annual review thereafter.

40. For all other LA maintained schools, the first run through is required by 31 March 2013; and an annual review thereafter.
41. For more information on SFVS, go to the DfE website:  
<http://www.education.gov.uk/schools/adminandfinance/financialmanagement/Schools%20Financial%20Value%20Standard>

#### **WHAT LEGISLATION DOES THIS REFER TO?**

The [School Standards and Framework Act 1998: Sections 43–51](#) and Schedules 14 and 15 (as amended by the Education Act 2002, the Education Act 2005, the Education and Inspections Act 2006, the Education and Skills Act 2008 and the Apprenticeships, Skills, Children and Learning Act 2009),

The [School Finance \(England\) Regulations 2012: SI 2012/335](#)

The [Schools Forum \(England\) Regulations 2010: SI 2010/344](#)

[Consistent Financial Reporting \(England\) Regulations 2003 \(SI 2003/373, as amended\)](#)

# 10 SCHOOL PREMISES AND CAPITAL INVESTMENT

## KEY POINTS

School land and buildings are important public assets. 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 construction of the buildings are funded by a private-sector contractor and their funders and are then operated and maintained by that private-sector contractor for an agreed period, typically 25 years. In these cases, it is usual for the contractor to be granted a licence to both construct and maintain 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>5</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 required the Secretary of State's consent to dispose of surplus non-playing field land or school buildings which had 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

<sup>5</sup> See [Schedule 6](#) to the School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007: SI 2007/1289 (as amended).

the Schools Adjudicator to determine. (Details of the new procedure can be found in the Department for Education (DfE) published guidance [available on the DfE website.](#))

### **Playing field land**

7. Particular protection has been given to school playing field land. Where the governing body of any maintained school<sup>6</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](#) on the protection of playing fields.)

### **Key changes introduced by Section 63 (Schedule 14) of the Education Act 2011**

8. Schedule 14 makes a number of changes to the arrangements governing disposal of publicly funded land, and the transfer of such land to Academies (including Free Schools).
9. Part 1 of the new Schedule 1 to the Academies Act 2010 deals with LA land and continues the long-standing arrangements requiring the consent of the Secretary of State before land may be disposed of, and that the Secretary of State may instead make a scheme to transfer the land to an Academy. The provisions of Schedule 35A to the Education Act 1996 are incorporated into the new Schedule 1 (and Schedule 35A is repealed).
10. Part 2 of the new Schedule 1 deals with land held by a governing body or trustees, and in conjunction with amendments to Schedule 22 to the SSFA, introduces new provision that the land may not be disposed of without the consent of the Secretary of State, and that he may instead direct that the land should be transferred to an Academy. Part 3 of the new Schedule 1 deals with Academy land, and again provides that publicly funded land may not be disposed of without the consent of the Secretary of State, and that he may make directions concerning the transfer of the land, including that it should be transferred to another Academy. Schedule 14 also amends Schedule 22 to the SSFA to provide that trustees are free to transfer publicly funded land to an Academy, and that governing bodies and trustees must inform the Secretary of State of the proposed disposal of publicly funded land, and may not dispose of it without his consent (under Part 2 of the new Schedule 1 to the AA he may instead direct that the land is transferred to an Academy). Section 77 of the SSFA is amended to provide that the consent of the Secretary of State is required before a local authority or school may change the use of publicly funded playing fields, even where this is connected with educational or recreational facilities. In line with other changes noted above, it is also amended to provide that where an application for disposal or change of use of playing fields is made to the Secretary of State, he may instead direct that the land should be transferred to an Academy. It is hoped that any use of these powers will be rare and that most transfers of land to Academies and Free Schools will take place by mutual agreement, as at present.
11. 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. A governing body, foundation body or trustees must first notify the LA before providing the Department with the required

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<sup>6</sup> Section 77(7) has been amended by the Education and Inspections Act 2006, so as that "maintained school" now includes "maintained nursery school".

information.

### **Discontinuance of a foundation or voluntary school**

12. 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**

13. **Capital** 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 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.
14. The major government funding streams for LAs are for maintenance and the provision of new pupil places (Basic Need). Devolved Formula Capital is allocated via LAs for schools' own use.
15. Maintained schools of any category may not enter into contracts which involve borrowing without the consent of the Secretary of State for Education (the [Education Act 2002](#)). In practice, because borrowing scores directly against the 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.
16. The DfE 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.
17. More detailed guidance on each type of allocation, how it is determined and how it must be spent, is available on the [DfE website](#).

### **Value added tax (VAT)**

18. The DfE 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**

19. The [Building Regulations 2010](#), which set standards for the design and construction of buildings, apply to most buildings in England and Wales 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 the construction of new schools and many alterations of and improvements to existing school buildings.

20. The DCLG publishes guidance on meeting the requirements of the Building Regulations in what are known as “Approved Documents” (ADs). AD B (Fire Safety), AD E (Resistance to Sound) and AD F (Ventilation) refer to DfE guidance for satisfactory means of meeting the requirements of the Regulations in school buildings.

Further information on the Building Regulations, ADs and associated guidance is available on the government [Planning Portal](#). Where an agent is employed, such as an architect or surveyor, they will ensure that school building projects comply with the Building Regulations

21. In addition to these are regulations which apply to all schools maintained by local authorities in England and Wales – the Education (School Premises) Regulations 1999 (see below). Independent schools, including Academies and Free Schools, have to meet the requirements of the Education (Independent School Standards) England Regulations 2010.

### **School Premises Regulations**

22. This section reflects current legislation. Revised, simplified regulations will come into force in September 2012.

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The [Education \(School Premises\) Regulations 1999](#) set minimum standards for the premises of all existing and new maintained schools in England and Wales: that is, to community, community special, foundation, foundation special and voluntary schools. There are 15 areas of regulation applying to all maintained schools and 7 to maintained boarding schools. The regulations cover school facilities, structural requirements etc. (including environmental standards and health, safety and welfare), playing fields and boarding accommodation.

23. Team game playing fields must be provided in all schools with pupils aged eight years or older, except in Pupil Referral Units. These must satisfy the minimum areas specified in Schedule 2 of the Regulations, which are based on pupil numbers and ages.

24. 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, grassed and all-weather artificial pitches. Playgrounds may also be considered to be team game playing fields, provided that they are marked out for team games, such as netball and five-a-side soccer.

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.

25. The responsibility for ensuring that a school complies with the Regulations 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.

### **Making premises suitable for disabled pupils and those with special educational needs (SEN)**

26. The [Equality Act 2010](#) (“The Act”) has replaced all existing equality legislation including the [Disability Discrimination Act 1995](#) (DDA) which applied to schools since 1996. As well as making it unlawful for a school to discriminate against disabled pupils, the Act makes it unlawful for any organisation or person that provides a

- service to discriminate against disabled people.
27. The Act defines disability as when a person has a 'physical or mental impairment which has a substantial and long term adverse effect on that person's ability to carry out normal day to day activities.' HIV, multiple sclerosis and cancer are all considered as disabilities, regardless of their effect.
  28. The Act sets out details of matters that may be relevant when determining whether a person meets the definition of disability. Long term is defined as lasting, or likely to last, for at least 12 months.
  29. Schools are required to make reasonable adjustments in relation to provisions, criteria or practices where these place a disabled pupil at a substantial disadvantage compared to pupils without a disability. The government intends that, from September 2012, schools will have to provide auxiliary aids and services as part of their duty to make reasonable adjustments where this would prevent disabled children being put at a substantial disadvantage.
  30. LAs and schools are also 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.
  31. 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 other benefits, facilities or services provided by the school;
    - improve the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled receive.
  32. The Act provides for 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. In looking at how the needs of pupils are being met in its inspection of schools, Ofsted may also ask to see a school's accessibility plan. The Secretary of State for Education can intervene where an LA or school is not complying with the planning duty and can direct an LA or school to do so.
  33. LAs and schools have been required to have their written strategies and plans in place since 1 April 2003 and need to be reviewed every three years.
  34. Part 3 of the Act applies to the governing body of a school where, as a 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. A school when providing such a service must not discriminate against disabled people by refusing to provide a service to them, by offering the service on less favourable terms or by subjecting the disabled person to any other detriment, such as providing the service to a lower standard.
  35. Schools, as providers of services are also subject to the same reasonable adjustment duties in respect of service users as they are for their pupils (see paragraph 31 above). This may require them to change the way they provide the service to the disabled person.
  36. For more detailed guidance on meeting equality duties, please go to Section 18 or [the Department's practical advice for Schools and Local Authorities](#).

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

37. 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**

38. The standard rate of grant support to voluntary aided school governing bodies from the DfE 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 DfE 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 on the [DfE website](#).

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

39. 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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40. 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**

41. [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**

42. 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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43. 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 DfE applies this policy in all cases where proceeds accrue, or are expected to become available, to the trustees, governing

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body or promoters. More information on proceeds of sale can be found under 'Sale of School Land' on the DfE website.

### **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

### **WHAT LEGISLATION DOES THIS REFER TO?**

[The Building Regulations 2010: SI 2010/2214](#)

[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 Equality Act 2010](#)

[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 \(as amended by Sections 41–43 and 45 of the Education Act 2002 and Section 101 and Schedule 16 of the Education Act 2005\)](#)

### **FURTHER SOURCES OF INFORMATION**

[Capital Funding guidance on the DfE website](#)

[Capital Funding for Voluntary Aided \(VA\) schools in England \(also known as the Blue Book\) guidance on the DfE website](#)

[Disposal of Playing Fields, DfE guidance](#)

[Equality Act 2010, guidance on the DfE website](#)

[Health and safety in schools guidance on the DfE website](#)

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

## 10. School Premises and Capital Investment

[The School Premises Regulations, guidance on the DfE website](#)

[The Office of the Schools Adjudicator](#)

# 11 STAFFING

## KEY POINTS

This section 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. Staff in community, voluntary controlled, community special and maintained nursery schools are employed by the local authority. The governing body is the employer of the staff in foundation and voluntary aided schools and foundation special schools.
2. Governing bodies and head teachers have responsibilities for selecting and managing staff.
3. The main staffing functions of the governing body are set out in the [School Staffing \(England\) Regulations 2009](#). Guidance ([Guidance on managing staff employment in schools](#)) has also been issued by the Secretary of State, some of which is statutory guidance which governing bodies must take into account when exercising their staffing functions under the Regulations. These Regulations provide for:
  - the appointment of a head teacher and deputy head teachers;
  - 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 head teacher;
  - advice from the local authority and the head teacher on appointments and dismissals;
  - the role of the local authority to make written representations on unsuitable head teacher candidates, or where there is serious concern about the performance of the head teacher.

Governing bodies also have responsibilities under employment law.

## THE ROLE OF THE GOVERNORS AND HEAD TEACHER

4. The governing body has overall responsibility for staffing matters within their school.
5. The School Staffing Regulations allow the governing body to delegate many of its staffing functions to the head teacher, one or more governors, or a combination of the two.
6. Governing bodies 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 head teacher or deputy head teacher (see paragraphs 9-13 below).
7. Where these functions relate to staff appointments outside the leadership group, the governing body should delegate them to the head teacher unless there are good grounds not to do so. The governing body of a voluntary aided school with a religious character may agree staffing policies, which provide for governor involvement in the interests of preserving the school's religious character. Further guidance about these

provisions is contained in the [Guidance on managing staff employment in schools](#).

### **LOCAL AUTHORITY ADVISORY RIGHTS**

8. The local authority has a statutory entitlement to send a representative to all proceedings relating to the selection or dismissal of any teacher (including the head teacher and deputy head teacher) and offer advice to governing bodies of community, voluntary controlled, community special and maintained nursery schools. Any advice offered by the local authority must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision and should be fully documented.

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Governing bodies of voluntary aided schools, foundation, and foundation special schools are in general, the employers of teachers and support staff (although some support staff are employed directly by the local authority). The local authority does not have any statutory entitlement to advise the governing body in relation to the appointment and dismissal of teachers (including head teachers and deputy head teachers). However, it may do so where an agreement between the governing body and the local authority provides for it to do so. Any agreement must be in writing and give details of what advisory entitlements the local authority has been given. The governing body may terminate the agreement by giving notice in writing. Any advice offered by the local authority, in accordance with the agreement, must be considered by the governing body (or those to whom the function has been delegated) when reaching its decision.

### **APPOINTING THE HEAD TEACHER**

9. [The 2002 Education Act Sections 35\(3\) and 36\(3\)](#) requires every school to have a head teacher. The governing body must notify the local authority in writing of any vacancy for a head teacher post, and advertise the post in such manner as it considers appropriate, and then appoint a selection panel consisting of at least three of its members, other than the head teacher. The role of the selection panel is to notify the local authority, in writing, of the names of applicants selected for interview for the post of head teacher, interview the applicants selected, and recommend one of the applicants to the governing body for approval. The governing body's decisions should be fully documented, as it will need to demonstrate that it acted reasonably if challenged. The appointment process should be conducted in a fair manner that does not contravene any discrimination legislation and includes safer recruitment measures.
10. It is recommended that the selection panel agree with the local authority what additional information it needs in order to enable it to decide whether to make written representations about any of the candidates. If the local authority decides that a candidate chosen for interview is unsuitable for the post of head teacher, it must submit written representations to the selection panel within seven days. The selection panel must then consider the local authority's views before making a decision. If the selection panel decides to recommend an applicant for appointment about whom representations have been received, it must notify the local authority, in writing, of its reasons. If the selection panel makes no recommendation, the governing body does not approve the recommendation or the local authority declines to appoint the recommended candidate, or, in the case of foundation, voluntary aided and foundation special schools, the governing body declines to appoint the recommended candidate, the selection panel must carry out the process again, or recommend that an existing candidate identified as being suitable through the current selection process.

11. The local authority must appoint a person approved by the governing body of a community, voluntary controlled, community special or maintained nursery school, unless that person fails the relevant checks.
12. In foundation, foundation special or voluntary aided schools the governing body may appoint the person recommended by the selection panel, unless that person fails the relevant checks.
13. [Regulation 34 of the School Staffing Regulations 2009](#) modifies the selection process for Schools of Roman Catholic Orders. The governing body must notify the local authority and the Major Superior of the vacancy in writing, interview those members of the Order who are proposed as candidates by the Major Superior, and appoint the successful applicant, unless they fail the relevant checks or it has other good reason not to make such an appointment. If, after interviewing the candidates proposed by the Major Superior of the Order, the governing body decides, for good reason, not to appoint any of them, the standard procedure for appointing a head teacher must be used to fill the post and this is set out in Chapter 5 of the [Guidance on managing staff employment in schools](#).

### **APPOINTING DEPUTY HEAD TEACHERS**

14. The procedure for appointing a deputy head teacher is the same as that for head teachers. There is no legal obligation for a school to have a deputy head teacher, or a limit on how many deputies a school may have. The governing body must notify the local authority in writing where it identifies either a current or a new post to be filled.

### **ADVISORY RIGHTS OF DIOCESAN AUTHORITIES**

15. It is recommended that the governing bodies of foundation, voluntary controlled and voluntary aided schools which are Church of England or Roman Catholic Church schools have the same advisory rights as the local authority in relation to the appointment and dismissal of teachers at their school. Further advice can be found at Chapter 3 of the [Guidance on managing staff employment in schools](#).

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

16. In voluntary aided schools which have a religious character, the governors have extra rights with respect to employing, appointing or dismissing teachers. In appointing, paying or promoting teachers, the governing body may give preference to persons:
  - 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.
17. In considering dismissals of teachers, 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.
18. 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 teachers, in terms 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 Staffing Guidance issued by the Department for Education (DfE) reminds schools of their obligations and provides specific guidance (including that from ACAS) as to when a GOR would apply.

19. At voluntary aided schools, whose trustees are trustees of a Roman Catholic religious order, the governing body may appoint as head teacher a candidate proposed by the Major Superior of the order without going through the usual procedures for appointing a head teacher, including setting up a selection panel. The governing body may not appoint a candidate who fails to meet the qualifications requirements described in paragraphs 22–25, below.

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

20. 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.

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21. 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 head teacher), 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.

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### **TEACHER QUALIFICATIONS**

22. Teachers employed at local authority 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 an 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 administered by the Teaching Agency in England and the National Assembly in Wales.

23. The Teaching Agency advises whether a teacher has been awarded QTS. Checks on whether teachers hold QTS can be conducted on-line through Employer Access at: [www.education.gov.uk/employeraccess/LoginAction.do](http://www.education.gov.uk/employeraccess/LoginAction.do).

From 1 April 2012, further education teachers who have been awarded QTLs by the Institute for Learning (IfL) and are members of the IfL are recognised as qualified teachers in schools. This allows them to be appointed to permanent posts in state maintained schools in England and paid on the qualified teachers' pay scale. There is no need for them to apply to the Teaching Agency for QTS. A certificate from the IfL is sufficient evidence that they are qualified teachers. They will continue to be recognised as qualified school teachers providing they remain a member of the IfL. Further information is available at:

[www.education.gov.uk/schools/careers/traininganddevelopment/qts/a00205922/qltsguidance](http://www.education.gov.uk/schools/careers/traininganddevelopment/qts/a00205922/qltsguidance) .

24. 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 should apply to the Teaching Agency for QTS. Further information and an application form are available at:

[www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers/a00199246/teachers-from-the-european-economic-area-eea](http://www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers/a00199246/teachers-from-the-european-economic-area-eea).

25. 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. Instructors are temporary appointments until a suitable qualified or trainee teacher can be appointed.

#### **Overseas trained teachers**

26. The [Education \(Specified Work and Registration\) Regulations 2012](#) provide 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 he or she 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.

27. 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.

28. 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 local authorities and are encouraged to make arrangements to obtain QTS via the appropriate TDA-approved route, usually the OTT programme, shortly after they begin teaching. Full guidance is available on the DfE website: [www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers](http://www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers)

29. There are separate arrangements for teachers who qualified in Australia, Canada, New Zealand and the United States of America (USA). From 1 April 2012 they can be recognised as qualified teachers and awarded Qualified Teacher Status (QTS) in England without being required to undertake any further training or assessment. In order to be awarded recognition as a qualified teacher, they will need to have satisfied both of the following conditions in Australia, Canada, New Zealand or the USA:

- (a) they must have successfully completed a course of initial teacher training (ITT) which is recognised by the competent authority in that country; and
- (b) successfully completed or satisfied any additional conditions, including any period of professional experience comparable to an induction period, which are required for employment on a permanent basis in government schools (schools wholly or mainly government funded) in Australia, Canada, New Zealand or the USA.

Further information, including how they apply for QTS, is at

[www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers/a00205926/australia-canada-nz-usa](http://www.education.gov.uk/schools/careers/careeropportunities/overseas-trainedteachers/a00205926/australia-canada-nz-usa).

30. Under the requirements laid down in the [Education \(School Teachers' Qualifications\) \(England\) 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

### **TEACHER REGULATION / ABOLITION OF THE GENERAL TEACHING COUNCIL FOR ENGLAND (GTCE)**

31. The Education Act 2011, provided for the abolition of the GTCE and for the Secretary of State to take responsibility for the regulation of the teaching profession from 1 April 2012. The Teaching Agency, a new executive agency of the Department for Education, operates the new arrangements on behalf of the Secretary of State. The new regulatory arrangements cover teachers in all schools in England and only deal with cases of serious misconduct, not incompetence. Employers have a duty to consider whether to refer a teacher who has been dismissed for serious misconduct, or would have been dismissed had they not resigned. Members of the public, other regulators and the police are also able to refer cases of misconduct. There is no longer a register of teachers - in its place there is a database of teachers who hold QTS and who have passed induction. There is also a list of teachers who have been prohibited from working in schools in England. Details are available via the DfE website at <http://www.education.gov.uk/schools/leadership/teachermisconduct>.

#### **The Employer Access Online system**

32. When making appointments, employers can use the Teaching Agency's employer access to check whether a teacher they employ or are considering employing has:
- achieved qualified teacher status (QTS)
  - completed his/her induction
  - been awarded a mandatory qualification for teachers of hearing impaired or visually impaired pupils
  - is prohibited from teaching or has a current sanction previously imposed by GTCE.

The system provides access to separate lists of:

- teachers who have been prohibited from teaching
  - teachers who may be the subject of a suspension or conditional order imposed by the GTCE (prior to its abolition) that is still current
  - teachers who have failed to successfully complete their induction or probation period.
33. Making these checks is a key public safeguard, alongside criminal record checks, identity checks and the scheme for barring unsuitable teachers run by the Independent Safeguarding Authority (ISA).

#### **Referring cases to the Teaching Agency and the Independent Safeguarding Authority**

34. Allegations of serious misconduct against a teacher may be referred to the Teaching Agency by any of those listed below:
- a teacher's employer, including an employment or supply agency, has a legal



duty to consider whether to refer a case to the Teaching Agency when they have dismissed a teacher for misconduct, or would have dismissed them had they not resigned first

- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order, although the Teaching Agency will expect local procedures to have been exhausted before it will consider investigating the case
- the police, the ISA and other regulators who are aware of relevant information.

35. Where there are issues of safeguarding or a risk of harm to children, cases must be referred to the ISA. Referrals should be made to both ISA and the Teaching Agency in cases where there is alleged serious teacher misconduct as well as safeguarding issues.

Further details can be found at:

<http://www.education.gov.uk/schools/leadership/teachermisconduct/b00203674/referring>

### **INDUCTION OF NEWLY QUALIFIED TEACHERS**

36. This section reflects current legislation. Changes to the induction of newly qualified teachers section and revisions to the [Education \(Induction Arrangements for School Teachers\)\(England\) Regulations 2008](#) regulations have been brought into force on the 1 April 2012; in accordance with the Education Act further changes are expected to come into force in September 2012.
37. Regulations: the [Education \(Induction Arrangements for School Teachers\) \(England\) Regulations 2008](#) relating to the induction of newly qualified teachers (NQTs) came into force in September 2008 and the [Education \(Induction Arrangements for School Teachers\)\(England\)\(Amendment\)Regulations 2012](#) came into force on 1 April 2012 [Supporting guidance](#) is available on the [DfE website](#).
38. 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 as a teacher unless they have completed or are working towards completion of a statutory induction period.
39. 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 should count towards induction and appropriate arrangements for this should be made. NQTs must have at least a 10 per cent reduction to their timetable as part of their induction programme.
40. This is in addition to planning, preparation and assessment time. Under the terms of the [STPCD](#), the professional duties of head teachers 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.
41. 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.

42. Funding for the induction of NQTs in maintained and non-maintained special schools is incorporated into the main school funding system. It is for head teachers to ensure that the school commits appropriate resources to induction. Additionally, independent schools (including Academies, 16-19 Academies and Free Schools) or further education institutions choosing to offer induction to NQTs should ensure that appropriate resources are deployed.
43. At the end of the induction period the appropriate body (i.e. the local authority maintaining the school) is responsible for deciding whether the NQT has met the core standards on the basis of the head teacher's recommendation.
44. 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](#) and in the amendments of 1 April 2012. If an NQT 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 Teaching Agency is the body to set up a panel to hear such appeals. The Regulations provide that the panel should make a recommendation to the Secretary of State to allow the appeal, dismiss the appeal or extend the appellant's induction for such duration as it thinks fit. The panel 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 Secretary of State is final, although appellants may seek a judicial review of their case.
45. 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.
46. 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.
47. 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 [DfE](#) website.

#### **CHECKING APPLICANTS**

48. When the governing body (or head teacher) has chosen to appoint a teacher, the local authority must check that the person meets the staff qualifications requirements (see paragraphs 31 - 33 above). These requirements are set out in the [Education \(School Teachers' Qualifications\) \(England\) Regulations 2003](#), the [Education \(Specified Work\) \(England\) Regulations 2012](#), the [Education \(Specified Work and Registration\) \(England\) \(Amendment\) Regulations 2007](#) and the [Education \(Induction Arrangements for School Teachers\) \(England\) Regulations 2008](#).

49. The local authority must be satisfied that the candidate has the necessary health and physical and mental capacity for the post. The local authority will seek the advice of its medical adviser on this. The local authority must be satisfied that the candidate has the appropriate teaching qualifications, which in the case of teachers almost invariably will include QTS.
50. DfE's [School Staffing \(England\) Regulations 2009](#) say that a Governing Body must obtain, for all new appointments (as defined below) to a school's workforce, an enhanced Criminal Records Bureau (CRB) check before or as soon as practicable after appointment, and a barred list check before appointment. Both these checks are explained below. New appointments mean 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.
51. The above requirement includes newly appointed staff who have lived outside the UK, for whom the governing body is under a duty to ensure that all appropriate checks for suitability have been undertaken. In addition, the Government recommended in 2007 that schools should do checks retrospectively on the above basis on staff who have lived outside the UK and whom they recruited between March 2002 and 2007 (recommended at paragraphs 4.65 and 4.66 of [Safeguarding Children and Safer Recruitment in Education](#)).
52. DfE's [School Staffing \(England\) Regulations 2009](#) also require schools to keep a single central record, detailing the range of checks they have carried out on their staff.
53. The barred list check mentioned above is a check that the person is not barred from "regulated activity" in relation to children (which includes any paid work in a school with an opportunity for contact with children) by the ISA, under the [Safeguarding Vulnerable Groups Act 2006](#) (see also below, about forthcoming changes). From October 2009, the ISA barred list broadly replaced List 99, the Protection of Children Act 1999 (PoCA) List, and Disqualification Orders by the Courts (disqualification from certain work with children).
54. A school has a statutory duty to refer an employee to the ISA if the school dismisses the employee (or would have, had the employee not left first) because of harm or a risk of harm to a child. The ISA's referral guidance is at [www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk).
55. The enhanced check mentioned above (currently provided by the CRB, and also known as a Disclosure) contains details of any convictions and cautions that a person may have, as well as any non-conviction information held by a local police force which the police think might be relevant to the work that the person is applying for. If the person is applying for regulated activity, the CRB must also disclose details of whether the person is included on the ISA barred list (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 indicates the person could pose a risk of harm to children, the governing body should consider this in reaching its final recruitment decision. Local authorities will also need to check whether any restrictions are in force against the teacher (see paragraphs 31 - 33 above). A local authority must not appoint a person who fails to meet any staff qualifications requirement.

56. The 2006 Act is to be amended by changes in the Protection of Freedoms Act 2012 (Royal Assent was on 1<sup>st</sup> May). The changes will scrap previous proposals to require registration with the ISA, which never came into force. The changes are to come into force in stages between autumn 2012 and spring 2013. As revised, the 2006 Act will require head teachers to check that any new entrant (including unsupervised volunteers) to regulated activity in relation to children is not barred. A Disclosure and Barring Service (a new non-departmental public body merging functions of the CRB and ISA) will provide the barred list checks. They will be available by any of three routes: (i) with an enhanced check, (ii) as a stand-alone online check, or (iii) by subscribing to a new premium updating service.
57. The above changes will also reduce the scope of regulated activity: school governors will no longer be in regulated activity just by virtue of holding office. The Government has said that broadly, for persons who up to now have been in regulated activity, organisations will be entitled to do an enhanced check (without a barred list check). Details of the categories where this entitlement will apply will be announced in good time for implementation of the change to regulated activity in autumn 2012. The Government will also review sectoral requirements such as the School Staffing Regulations, to ensure consistency between them and any new requirements.

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

58. Applicants for posts at the school should be judged on their merits against the objective requirements for the job. Allegations that candidates have been given preferential treatment, or similar, may lead to an Employment Tribunal (see paragraph 107, below).
59. [The Equality Act 2010](#) replaced all previous equality legislation including the [Disability Discrimination Act 1995 \(DDA\)](#). Under the Act, employers (governing bodies and local authorities) must not discriminate against current or prospective employees with disabilities, or those who have had disabilities in the past. Employers are not permitted to make enquiries about the health or disability of any candidates until after a job offer has been made. There are some exceptions to this rule such as establishing whether any reasonable adjustments needs to be made or whether the candidate will be able to carry out a function intrinsic to the work concerned. Governors and local authorities must make reasonable adjustments to their employment arrangements, practices or premises if such changes would help alleviate any disadvantage suffered by a disabled employee compared to a non-disabled person. Section 18 of this Guide (Equalities) covers governing bodies' responsibilities on discrimination in more detail.

### **PAY AND CONDITIONS OF SERVICE**

#### **Pay and conditions of service for teachers in maintained schools in England and Wales**

60. The statutory requirements for teachers' pay and conditions within maintained schools in England and Wales are set out in [the School Teachers' Pay and Conditions Document \(STPCD\)](#) currently in force (it is updated every year on the 1st September). Schools and local authorities must abide by these requirements. Guidance on teachers' pay and conditions can be found in the Section 3 guidance which accompanies the STPCD.
61. The relevant body of a school (usually the governing body) must adopt a pay policy setting out the basis on which it determines teachers' pay and must review the pay of all teachers annually. In doing so it must keep within the statutory provisions set out in the annual STPCD, which sets out the basis for determining teachers' salaries and

allowances.

62. All teachers within maintained schools are subject to statutory conditions relating to their professional duties and working time (Parts 8 to 10 of the [STPCD](#)). These have effect as terms of their contracts of employment. In addition to these statutory conditions, teachers are subject to other conditions of employment which are laid down in their contracts of employment by the local authorities themselves, such as those that provide for sick pay and maternity leave. Lastly, the terms of certain local agreements may be incorporated into their contracts of employment.
63. Under the [Equality Act 2010](#) women are entitled to the same pay as men if they are employed to do the same work, work rated as equivalent or work that is of equal value. The [Equality Act 2010](#) implies a sex equality clause into their terms of employment in order to ensure equality of terms. Governing bodies must ensure that this requirement is complied with when making decisions about pay.

#### **Pay and conditions of service for support staff**

64. In the case of community, voluntary controlled, community special and maintained nursery schools, the local authority must appoint support staff in accordance with the pay and conditions recommended by the governing body, although the grade must be on the scale of grades applicable in relation to employment with the authority. The local authority has an entitlement to make representations about the grade and remuneration of support staff.
65. In the case of foundation, voluntary aided and foundation special schools, the governing body is responsible for determining the pay and conditions of support staff as well as appointing them, unless the governing body and the authority agree that the authority will make the appointments ([Regulations 17 and 29 of the School Staffing \(England\) Regulations 2009](#)).

#### **PERFORMANCE MANAGEMENT**

**New arrangements for teacher performance management are due to come into effect on 1 September 2012. In the meantime, the current regulations continue to apply.**

66. The current regulations on performance management for teachers and head teachers were made on 4 October 2006 and came into effect on 1 September 2007.
67. The [Education \(School Teacher Performance Management\) \(England\) Regulations 2006](#):
- require governing bodies (or, in the case of unattached teachers, local authorities) to establish and, together with the head teacher, 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 head teacher), head teachers and local authorities (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, head teachers and local authorities to moderate the plans drawn up by individual governors or line managers;
  - provide head teachers and teachers with a right of appeal against any of the entries recorded in their statement; and

- require governing bodies and local 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 \(Induction Arrangements for School Teachers\) \(England\) Regulations 2008](#);
- the subject of capability procedures.

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

68. 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 head teacher to do so. Where the head teacher 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.
69. 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.
70. The head teacher and the governing body are responsible for implementing the performance management policy. The head teacher 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.
71. 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 external advisers in respect of head teachers (Regulation 9)**

72. The governing body must appoint an external adviser to provide it with advice and support in relation to the management and review of the performance of the head teacher. Where the Local Authority has appointed a School Improvement Partner (SIP) for the school, the governing body does not have to appoint an external adviser as the governing body must use the SIP for the advice and support that it needs for this purpose.

### **Appointing reviewers for head teachers (Regulation 10)**

73. The governing body must determine the timing of the performance management and review cycle of the head teacher. The governing body also acts as the reviewer for head teachers. 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.
74. 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.
- VA Where the governing body of a voluntary aided school appoints two governors, one  
VC Where they have appointed three governors, a minimum of two of them must be foundation governors.  
F

75. A head teacher 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 head teacher of its decision in writing, stating its reasons and, upon request, attach the head teacher's request and its decision to the statement for that cycle.
76. 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.

#### **Head teacher performance (Regulation 18)**

77. The relevant governors must meet with the external adviser or School Improvement Partner (SIP) and the head teacher to discuss and determine the head teacher's objectives and performance criteria for the coming year (the planning meeting).
78. The head teacher's objectives should be agreed between the head teacher and the appointed governors, with advice from the external adviser or 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 head teacher. The agreed or set objectives must be recorded in a written statement. If the objectives have been set, rather than agreed, the head teacher may add written comments to the statement.
79. At or near the end of each cycle, the relevant governors and the external adviser or SIP must meet with the head teacher 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.
80. 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 head teacher. 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 head teacher, 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 head teacher. 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)**

81. A key part of the planning discussion should be about determining the teacher'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, and/or relevant standards. Support to help the reviewee meet these criteria or standards 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, or through peer-to-peer support, coaching and mentoring and lesson observation.

## **ASSESSMENT AGAINST POST-THRESHOLD TEACHER STANDARDS**

82. The current Post-Threshold teacher standards came into effect on 1 September 2007. They formed part of a framework of national standards, from QTS and induction right up to headship.
83. 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 head teacher for assessment against the post-threshold teacher standards (set out in Annex 1 of the [STPCD](#)).
84. 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 head teacher. The head teacher 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 head teacher 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 head teachers 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.
85. In the case of unattached teachers, the LA 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.
86. 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.
87. Information about and the threshold process can be found in the [Threshold Round 10 Guidance \(English\)](#) and [Threshold Round 10 Guidance \(Welsh\)](#), which are still applicable for Round 12 applications so long as deadline dates are moved on 2 years.
88. New Teachers' Standards will be effective from 1 September 2012; these standards were developed by the independent Teachers' Standards Review and replace the existing standards for qualified teacher status (QTS) and Core, and the GTCE's *Code of Practice for Registered Teachers in England*. The Review also recommended that the higher-level standards for post-Threshold, Excellent Teacher and Advanced Skills Teacher be discontinued, and advocated the introduction of a new Master Teacher Standard. However, the existing standards will continue to apply at least until such a time as the Secretary of State has taken advice from the School Teachers' Review Body and responded in full to the Review's recommendations. There is no timetable for when this will be.

## **DISCIPLINE, GRIEVANCE, CAPABILITY PROCEDURES AND SUSPENDING STAFF**

89. The governing body is responsible for establishing disciplinary and grievance procedures for staff. This function cannot be delegated by the governing body. When establishing and applying these procedures, the governing body should take into consideration the [Advisory, Conciliation and Arbitration Service \(ACAS\) Code of](#)



**Practice.** They must also establish capability procedures for dealing with the lack of capability of staff at the school. The governing body or head teacher may suspend anyone who works at the school. Each must inform the other of the suspension and, if the member of staff concerned is employed in a community, voluntary controlled, community special or a maintained nursery school, the local authority. Only the governing body can end the suspension. When ending the suspension, the governing body must inform the head teacher and, if the member of staff concerned is employed in a community, voluntary controlled, community special or maintained nursery school, the local authority. Where a foundation, voluntary aided or foundation special school and the local authority have agreed that the authority will make support staff appointments, the governing body must also immediately inform the local authority when ending the suspension. Where the local authority is the employer it is responsible for suspending of school meal staff employed in these schools.

### **LOCAL AUTHORITY CONCERNS ABOUT THE PERFORMANCE OF THE HEAD TEACHER**

90. If a local authority has serious concerns about the performance of a head teacher it must: send a written report of its concerns to the governing body of the school; and at the same time, send a copy of the report to the head teacher. The governing body must notify the authority of any action the chair proposes to take in the light of the authority's report. Before submitting a formal written report, it would be good practice for the local authority to register its concerns informally with the chair of the governing body. If the appropriate action is not taken in the light of the concerns registered, the local authority must send a formal written report to the governing body of the school.

### **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 local authority.

### **TRADE UNIONS**

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

### **DISMISSING STAFF**

93. The governing body of a community, voluntary controlled, community special or maintained nursery school must notify the local authority, in writing, if it determines that any person employed or engaged by the local authority to work at the school should cease to work there, and the reasons for that determination. If the person is employed to work solely at the school, the local authority must either terminate the person's contract, giving notice as required under the contract or terminate the contract without notice if the person's conduct is such that it is entitled to do so. The local authority must take this action within 14 days of the date the notification was issued by the governing body. Where the person concerned is not employed to work solely at the school, the local authority must require the person to stop working at the school.

94. Where a foundation, voluntary aided or foundation special school and the local authority have agreed that the authority will make support staff appointments, guidance provided in Chapter 8 of the [Guidance on managing staff employment in schools](#) apply.
95. The governing body must establish a procedure enabling staff to appeal against a decision to dismiss them. When establishing the procedure the governing body should be mindful of their obligations under employment law.
96. Governing bodies should also refer to Chapter 3 of the [Guidance on managing staff employment in schools](#) regarding the rights (whether statutory or by agreement) of local and diocesan authorities to give advice.

### **REDUNDANCY**

97. Redundancies are covered by specific employment legislation and governing bodies should consult the Advisory, Conciliation and Arbitration Service (ACAS) for advice. Further details can be found on the ACAS website at [www.acas.org.uk](http://www.acas.org.uk).

### **TEACHERS' PENSION SCHEME**

98. 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 to the TPS have given more flexibility and greater choice over how individuals save and plan for retirement. The regulations which currently govern the TPS are the Teachers' Pensions Regulations 2010 (SI2010 No. 990) ("the pensions regulations").
99. The changes have not altered the normal pension age for those who joined the TPS before 2007, this 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.
100. The arrangements allow teachers to take part of their pension benefits while remaining in employment in a reduced capacity, for example, by going part-time. This supports 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. The average salary used for the calculation of retirement benefits is on the better of either the member's salary in the last year or the average of the best three consecutive years' salaries in the last 10 years.
101. The TPS is administered, on behalf of the DfE, by Teachers' Pensions. All public service pension schemes are currently undergoing reform intended to be implemented with effect from 2015, up to date information on the Scheme can be found at <http://teacherspensions.co.uk/>.

### **PREMATURE RETIREMENT AND COMPENSATION FOR REDUNDANCY**

102. In the case of a school with a delegated budget, the governing body decides whether to grant premature retirement to teachers who are retiring before their normal pension age and whether to award them, by way of crediting them with a period of service (determined in accordance with regulation 11 of the [Teachers \(Compensation for Redundancy and Premature Retirement\) Regulations 1997](#)) discretionary compensation. Under the pensions regulations, the governing body has discretion to grant premature retirement either for redundancy or if the employment is terminated in the interests of the efficient discharge of the employer's functions. The minimum

age for premature retirement is 55 for all scheme members.

103. If the governing body grants a teacher premature retirement, the local authority, as the compensating authority, will have to pay mandatory compensation towards that teacher's annual pension and retirement lump sum. The amount of mandatory compensation will reflect the cost to the TPS of allowing the teacher to take his or her pension before the attainment of the normal pension age, age 60 or 65 (see paragraph 99). The further the teacher is away from normal pension age when he or she is granted premature retirement the higher the amount of mandatory compensation the local authority will have to pay. It should be noted that the pensions regulations prevent the payment of premature retirement benefits where a teacher has been paid, or is to receive, discretionary compensation for termination (also known as an enhanced severance payment) mentioned in the next paragraph.
104. The governing body also decides on the level of compensation to grant a member of staff who 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 £400), 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.)
105. The governing body should bear in mind that [section 37 of the Education Act 2002](#) gives local authorities the power to take the costs of premature retirements (including the cost of any added years' granted for the purpose of discretionary compensation for such a retirement) from school budgets if they have not agreed to the premature retirement. [Section 37\(5\) of the Education Act 2002](#) allows local authorities 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 a local authority 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 local authorities about premature retirements and redundancy compensation it plans to give.
106. Staff appointed several years ago may have contracts which say what payments must be made if teachers take early retirement. The governing body should make sure that any decision about by how much the pension should be increased takes account of these. Legal advice should be taken.

## **EMPLOYMENT TRIBUNALS**

107. Employment Tribunals hear complaints where employers have discriminated against individuals or failed to respect their rights under employment law. Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation. Guidance on the role of employment tribunals can be found on the Direct Gov ([www.direct.gov.uk](http://www.direct.gov.uk)) and ACAS ([www.acas.gov.uk](http://www.acas.gov.uk)) websites.

## **OTHER RELEVANT PARTS OF EMPLOYMENT LAW**

108. It is vital that governing bodies are aware of their responsibilities under employment law. General advice can be obtained from a number of sources including the local authority, ACAS ([www.acas.org.uk](http://www.acas.org.uk)), The Department for Business Innovation and Skills ([www.bis.uk](http://www.bis.uk)), Business Link ([www.businesslink.gov.uk](http://www.businesslink.gov.uk)) and Directgov ([www.direct.gov.uk](http://www.direct.gov.uk)).

### **WHAT LEGISLATION DOES THIS REFER TO?**

The Equality Act 2010

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 Employment Rights Act 1996

The Education Act 2002: Sections 35, 36 and 37

The School Standards and Framework Act 1998: Sections 58, 59, 60 and 81 (as amended by the Education and Inspections Act 2006, section 37)

The Employment Relations Act 1999

The School Staffing (England) Regulations 2009: SI 2009/2680

The Education Act 2011: Sections 7-12

The Teachers' Disciplinary (England) Regulations 2012

The Education (School Teachers' Qualifications) (England) Regulations 2003: SI 2003/1662

The Education (Induction Arrangements for School Teachers) (England) Regulations 2008: SI 2008/657 as amended by The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010: SI 2010/1172

The Education (Specified Work) (England) Regulations 2012: 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

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 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 Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007: SI 2007/195

### **FURTHER SOURCES OF INFORMATION**

Guidance on managing staff employment in schools ([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 \(DfEE Circular 7/96\)](#)

[Early Retirement Arrangements for Teachers \(DfEE Circular 15/97\)](#)

[Physical and Mental Fitness of Teachers and of Entrants to Initial Teacher Training \(DfEE Circular 4/99\)](#)

[Statutory Guidance on Induction for Newly Qualified Teachers in England \(DCSF, June 2008\)](#)

[Post-threshold standards assessment](#)

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

[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)

## 11. Staffing

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## 12 SCHOOL IMPROVEMENT PARTNERS AND SCHOOL SELF-EVALUATION

### KEY POINTS

**Please note:** The duty on local authorities to appoint School Improvement Partners (SIPs) to all schools was repealed following the enactment of section 33 of the Education Act 2011 near the end of 2011. Central funding to support the appointment of SIPs had already ceased at the end of March 2011.

**Most schools will still need to appoint an external adviser for performance management purposes.**

**This section explains what the school's self-evaluation (SEF) mean for governors. Reference is also made to the school inspection, but for more detailed information on this, see section 15 (Inspection).**

### OVERVIEW

#### SCHOOL SELF-EVALUATION

1. Rigorous school self-evaluation is the starting point for planning, inspection and relations with the maintaining LA. 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.
2. 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*, can be found on the DfE website at [www.education.gov.uk/publications/standard/publicationDetail/page1/DFES-1290-2005](http://www.education.gov.uk/publications/standard/publicationDetail/page1/DFES-1290-2005) . It was issued jointly by the DfE and Ofsted and focuses on how schools can get the best out of self-evaluation and use the findings effectively for school improvement.
3. Governors continue to play an important part in the Ofsted inspection process (see section 15 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.

#### WHAT LEGISLATION DOES THIS REFER TO?

The Education and Inspections Act 2006 (Section 5)

Education (School Improvement Partner) (England) Regulations 2007: SI 2007/0025

The Education Act 2011 (Section 33)

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## 13 SCHOOL ADMISSIONS

This section is being prepared and will follow. Further information and advice on school admissions and admission appeals can be found on the DfE website at <http://www.education.gov.uk/schools/adminandfinance/schooladmissions>

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# 14 BEHAVIOUR AND ATTENDANCE

## KEY POINTS

This section gives an overview of governing bodies duties in relation to school discipline, including the use of exclusion as a sanction for disciplinary reasons.

The section 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, and so on. 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 head teacher in determining the measures that make up the school's behaviour policy;
  - consult the head teacher, other appropriate members of staff, parents and all pupils on this statement of principles.

While it is up to the governing body to determine their principles of behaviour they are expected to notify the head teacher that the following issues should be covered in the school's behaviour policy: (i) screening and searching pupils (including identifying in the school rules items which are banned and which may be searched for); (ii) the use of reasonable force or other physical contact with pupils; (iii) the power to discipline beyond the school gate; (iv) pastoral care for school staff accused of misconduct; and (v) when a multi-agency assessment should be considered for pupils who display continuous disruptive behaviour. In making or reviewing its statement of principles, the governing body must have regard to Behaviour and Discipline in Schools: Guidance for Governing Bodies issued by the Secretary of State for Education. This guidance is available via the following link:

<http://www.education.gov.uk/schools/pupilsupport/behaviour>.

2. In making or reviewing its anti-bullying policy, the governing body will wish to consult the advice on **bullying** issued by the Secretary of State (<http://www.education.gov.uk/schools/pupilsupport/behaviour/bullying>) which includes information on the powers of head teachers to tackle **bullying outside school premises (including cyberbullying)**.
3. The Education and Skills Act 2008 amends Section 29 of the Education Act 2002, which came into force in September 2010, gives governing bodies of schools the power to send pupils to provision aimed at improving their behaviour which is not on the school premises ("directing offsite"), for example to attend courses in anger management. They do not need parental consent to do this.

### **EXCLUDING PUPILS**

4. The Education Act 2002 (“the Act”) ([Section 52](#)) as amended and the Regulations made under the Act (“the Regulations”), namely the [Education \(Pupil Exclusions and Appeals\) \(Maintained Schools\) \(England\) Regulations 2002](#) as amended, govern the exclusion of pupils from maintained schools. “Exclude” means exclude on disciplinary grounds. There are two categories of exclusion: fixed-period or permanent.
5. The governing body must review certain exclusions and must consider any representations about an exclusion made by the parents of the excluded pupil. When carrying out their functions in relation to exclusions, governing bodies must have regard to statutory departmental guidance. The current guidance is available on the DfE website on the following link:  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/a0076478/exclusion-guidance>.
6. The system by which a governing body’s decision to uphold a permanent exclusion can be challenged will change from September 2012. New regulations and new guidance, coming into force in September 2012, are available on the DfE website on the following link:  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/a00208139/new-regs>.
7. School governing bodies have a duty to provide suitable full-time education for excluded pupils of compulsory school age from the sixth school day of a fixed-period exclusion. The only exceptions to this are pupils who have no further public examinations to take and pupils with a statement of special educational needs specifying fewer hours’ education than the number of hours provided for pupils in full-time education.
8. Independent appeal or review panels for exclusions must include school governors. Governors may volunteer to be part of a pool of members available to local authorities to fulfil this role, though they cannot be involved in cases that involve their own school.

### **SCHOOL ATTENDANCE**

9. Schools should have effective systems and procedures for monitoring school attendance, investigating and resolving the underlying causes of poor attendance, and for early identification of persistently 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.
10. Governors should take a close and regular interest in attendance issues and should ensure that school leaders take appropriate action on attendance.

### **Attendance and admissions records**

11. 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.

12. A pupil is placed on the admission and attendance registers on the first day that they are expected to attend.
13. 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 he or she last attended, if any.
14. Regulation 8 of the [Education \(Pupil Registration\) \(England\) Regulations 2006](#) as amended by the [Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2011](#) set out the grounds on which the name of a pupil shall be deleted from the admissions register. Pupils must not be deleted in circumstances other than those prescribed in the Regulations.
15. The attendance register must be taken at the beginning of each morning session and once during each afternoon session. On each occasion they must record whether each registered pupil at the school is:
  - present;
  - absent;
  - attending an approved educational activity (within regulation 6(4)); or
  - unable to attend due to exceptional circumstances (as defined in regulation 6(5) *as amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2010*).

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.

16. Schools should use the national [Absence and Attendance Codes](#) to record in the attendance register the attendance and absence of pupils whose names are on the admissions register. These codes help to ensure that schools record and monitor attendance and absence in a consistent way. Attendance and absence data is collected via the School Census using these codes.
17. 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 amendment;
- the reason for the amendment;
- when the amendment was made; and
- who made the amendment.

This helps to protect a school from false allegations that a register has been

improperly altered.

18. 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.
19. 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.
20. 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**

21. 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.
22. [The Education \(Pupil Registration\) \(England\) Regulations 2006](#) stipulates that leave of absence for holidays may be granted only in special circumstances. This leave should not be more than 10 days but allow longer in exceptional circumstances. The decision rests with schools, and families have no “right” to such leave. The application for leave must be made in advance by the parent the pupil normally resides with.

#### **Notifying the Local Authority**

23. 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.
24. At agreed intervals, the governing body must give the LA the name and address of every pupil of compulsory school age who:
  - does not attend school regularly; or
  - has been continuously absent without authorisation for not less than 10 school days, specifying the cause if known.

The governing body must also inform the LA of any pupil who is going to be removed from roll where they:

- have been taken out of school by their parents and are being educated outside the school system e.g. taught at home;
- have moved away from the area and is not known to have registered at

- another school;
- have a medical condition that prevents them from attending school;
- have a custodial sentence of more than four months and will not be returning to the school at the end of that period;
- have been permanently excluded.

#### **School absence data**

25. School governors are bound by the statutory requirement under [Section 538](#) of the Education Act 2006 which requires governing bodies to provide information requested by the Secretary of State. This includes absence data that will be collected every term through the School Census.

#### **Attendance prosecution by the Local Authority**

26. Schools must refer attendance cases to the LA where a child has been regularly absent. The LA will make enquiries prior to making the decision on whether or not to prosecute the parent under Section 444 of the Education Act 1996 for failing to secure their child's regular attendance at school or an alternative provision. There are two separate offences:
- a. Section 444(1) where a parent fails to secure his/her child's regular attendance; and
  - b. Section 444(1A) where the parent knowingly fails to cause his/her child to attend school regularly. This latter offence is an aggravated offence and if found guilty can lead to a maximum fine of £2,500 or up to three months prison by the court.
27. Legal proceedings may be brought only by the LA under Section 444 of the Education Act 1996. It is important that schools maintain an accurate record of the child's absence and how they have dealt with the case prior to referral to the LA. The LA can also consider a prosecution where a parent has failed to pay the penalty notice issued in full within 42 days.

#### **Parenting contracts**

28. 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; and
  - 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.
29. 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. There are no sanctions for refusal or breach of a contract by a parent, although if the school/LA applied for a behaviour order this would be taken into account by the court.

#### **Parenting orders**

30. 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 his or her 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.

31. 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).
32. 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 only where it considers this to be appropriate following a successful prosecution of a parent by an LA for failing to secure their child's regular attendance.
33. 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.
34. It is a matter for the court to grant an order. If granted, the order will last for up to 12 months. The court will appoint a responsible officer (e.g. head teacher or LA officer) to monitor the order and any breach of the order by the parent can be enforced in court and the parent fined up to £1,000.
35. 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 (behaviour order only).
36. The governing body may delegate responsibility for parenting contracts or behaviour orders to the head teacher. The head teacher 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 [DfE website](#).

#### **Penalty notices (for truancy and whereabouts of excluded pupils)**

37. Schools and LAs can issue penalty notices to parents under [Section 444A of the Education Act 1996](#), (introduced by section 23 of the [Anti-social Behaviour Act 2003](#)) where pupils fail to attend school regularly (truancy).
38. Schools and LAs can also issue penalty notices to parents 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 during school hours.

39. The governing body should make a decision as to whether or not they want to adopt penalty notices as part of their school's attendance and behaviour policies. The LA is responsible for administering the penalty notice scheme and must consult all the schools in its area on a local code of conduct. The local code must set out 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 the LA is willing and able to prosecute for the offence of irregular attendance under section 444. Payment of a penalty notice will discharge the parent's potential liability for a conviction for the offence under [Section 444A of the Education Act 1996](#) or [Section 103 of the Education and Inspections Act 2006](#). All LAs are required to have a published code in place. It is for individual governing body to decide whether or not to use penalty notices for either irregular school attendance or the presence of an excluded pupil in a public place.

#### **Issuing penalty notices**

40. LA officers and head teachers (latter can authorise their deputy and assistant head to do the same) are empowered to issue penalty notices in cases of irregular attendance under [Section 444A](#) of the Education Act 1996 or Section 105 of the Education and Inspections Act 2006 for the presence of excluded pupils in a public place 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.
41. All monies received by virtue of a penalty notice must be paid to the LA. Head teachers 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 by the LA on very limited grounds detailed in the [Education \(Penalty Notice\) \(England\) Regulations 2007](#). If a penalty remains unpaid after 42 days the LA must withdraw the notice and may decide 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 [DfE website](#).

#### **Attendance outside school premises**

42. The governing body can require pupils to attend instruction and training outside school premises for purposes other than religious education or collective worship.
43. From September 2010 governing bodies also have the power, under section 29A of the Education Act 2002, to require pupils to attend provision outside school premises for the purposes of improving their behaviour. The pupil's parents, and the local authority where the pupil has a statement of special educational needs, must be notified of this requirement at least two days before the placement begins. Full details of the information to be provided and other requirements relating to such off-site direction (including regular reviews of directions) can be found in the relevant regulations, [The Education \(Educational Provision for Improving Behaviour\) Regulations 2010 \(SI 2010/1156\)](#). A direction cannot continue beyond the last day of the school year in which it is made.

## **SCHOOL YEAR - SCHOOL TERMS - SCHOOL DAY**

### **School Year**

44. All maintained schools in England must meet for at least 380 sessions (190 days) in any academic year unless a specific exception in any one year has been legislated for by Parliament. 'Meet' means that teachers meet pupils.
45. This fits with the 190 days a year when a teacher may be required to teach pupils by a teacher's statutory conditions of service. (A teacher is required to be available for work up to 195 days: the employer or their delegate can specify the other 5 days beyond the 190. Up to 5 non-contact work days are often used for Continuous Professional Development (formerly known as in-service training or INSET) for teachers.)

### **Exceptions to the 190 day rule**

46. In 2011/2012, the school year is reduced by 2 sessions (one day) for all maintained schools allowing them legally to take the public holiday for the Queen's Diamond Jubilee (reducing minimum to 378 half-day sessions).

### **School Closures**

47. If a maintained school is 'prevented' from meeting (because of, for example, severe weather or infectious disease) and cannot make up the lost session(s) it can be considered to have been open during the session(s) for the purpose of the 380 sessions requirement. However, schools can make up the lost education by other means.
48. Planning to close a maintained school, so that for example it can refurbish or relocate or change its status, is not permissible. Projects should be planned to avoid such an eventuality. Planning to close does not mean the school is prevented from meeting. Projects should look ahead and avoid closure. For example, if construction work is likely to be still going on across the site during the first week of term, schools should have recourse to a Plan B to provide sessions elsewhere.
49. Pupil Referral Units are not subject to the 380 sessions rule.

### **School Terms**

50. School employers set the dates of their school year. In maintained schools the school year must begin after July. When planning their calendar, employers must adhere to the minimum 190 days on which schools must meet and to the maximum of 190 days on which teachers must be available to teach. Employers are the local authority in community, voluntary-controlled and community special schools; the governing body in foundation and voluntary-aided schools; the trust in Academies and Free Schools.
51. Local authorities, governing bodies in foundation and voluntary aided schools, Academies and Free Schools can adopt the Standard School Year if they wish to. This is established from year to year by a working group hosted by Government. This has 6 equal terms, 5 equal holidays and the long summer holiday. The number of 'holiday days' remain the same redistributed over the school year.
52. The Government has no plans to introduce changes to regulations determining school terms and holidays. The general thrust of our education policy is to give schools greater freedom and responsibility as to how they educate their pupils. Some schools have chosen to vary the length of their terms, or move away from the conventional three term model altogether because they believe it has educational advantages. Local Authorities and schools wishing to change term times should do so having consulted all interested parties, and provided for maintained schools that

they deliver the number of minimum sessions (380) required by the School Day and School Year (England) Regulations 1999.

53. Academies and Free Schools, after taking the views of all interested parties – including staff – may decide to have longer terms and shorter summer holidays since teacher pay and conditions can be varied in such schools.
54. Teaching is a unique profession in respect of holiday periods and teachers are guided by long-established term times. There are no plans to make any changes in respect of the current working time arrangements for teachers.

### **School Day Session Times**

55. There are no legal requirements regarding the length of the midday break, or the morning or afternoon sessions. Schools can, therefore, determine the length of each sessions and breaks. Every day on which a school meets is divided into two sessions with a midday break. We no longer make recommendations as to teaching times per Key Stage.
56. From 1 September 2011 all maintained schools have been free to change their session times quickly without having to follow a nationally prescribed process which could take up to 6 months. The Department revoked the Changing of School Session Times Regulations 1999 so that all schools now enjoy the same freedom to effect changes easily. Schools wishing to make small but permanent adjustments to the timings of their morning or afternoon sessions or lunch breaks can do so more easily.
57. We still expect schools to have regard to the views of parents, pupils and staff, and transport managers, and to manage change reasonably. But we no longer tie them in to specific procedures prescribed at national level.
58. 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. Academies however, are not required to meet the costs resulting from a school day change

### **Procedures at start and end of the school day**

59. This is within a school's discretion. Schools usually have clear policies in place and tell parents about them. 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. In this age of the ubiquitous mobile-phone parents can help by contacting the school over any difficulties such as late arrival of parent to collect.

### **WHAT LEGISLATION DOES THIS REFER TO?**

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 [Changing of School Sessions Times \(England\) \(Revocation\) Regulations 2011](#): SI 2011/1954 – with effect from 1 September

The Education (School Day and School Year) (England) Regulations 1999: SI 1999/3181

The Education (School Day and School Year) (England) (Amendment) Regulations 2011: SI 2011/154

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

The Education (Pupil Registration) (England) (Amendment) Regulations 2010: SI 2010/1725

The Education (Pupil Registration) (England) (Amendment) Regulations 2011: SI 2011/1625

The Education (School Performance Information) (England) Regulations 2001: SI 2001/3446

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 (Penalty Notices) (England) (Amendment) Regulations 2012 SI 2012/1046 coming into force from 1 September 2012- increase penalty amounts.

The Education and Inspections Act 2006: Sections 88, 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 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

The Equality Act 2010

The Education (Educational Provision for Improving Behaviour) Regulations 2010: SI 2010/1156

#### **FURTHER SOURCES OF INFORMATION**

DES Administrative Memorandum 1/88

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 1/98: LEA Behaviour Support Plans

[Keeping Pupil Registers](#) – Guidance on applying the Education Pupil Registration Regulations

[Absence and Attendance Codes: Guidance for Schools and Local Authorities](#)

[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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# 15 INSPECTION

## KEY POINTS

**This section explains the aims of the school inspection process, the circumstances in which a school may be inspected and the procedures which the head teacher and governing body are expected to follow prior to and following an inspection.**

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**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 provides an independent external evaluation of a school's effectiveness. It aims to contribute to school improvement by, for example, highlighting strengths and weaknesses, promoting a culture of rigorous self-evaluation and providing clear recommendations for future action. Published inspection reports provide parents with information to inform their choices and preferences. In addition, evidence from inspection contributes to the development of policy and to wider debate about the education system.
2. Publicly funded schools are subject to regular inspection by Ofsted, which is a non-ministerial government department, separate from the Department for Education (DfE). Inspections are conducted on behalf of the Chief Inspector by Her Majesty's Inspectors (HMI) and Additional Inspectors (AIs). Most AIs are employed by, or work under contract to, external contractors (inspection service providers).
3. The Chief Inspector is required to ensure that all inspectors have the necessary qualifications, experience and skills to perform their functions effectively. In the case of AIs engaged by external contractors, the Chief Inspector publishes details of the requirements and the contractors are responsible for ensuring that AIs meet these. The Chief Inspector also publishes, at intervals of not more than 12 months, the names of inspectors that the contractors intend to use.
4. In the case of a routine school inspection (a "Section 5 inspection", see paragraph 6 below), AIs need to conduct an inspection to the satisfaction of an HMI before they are permitted to inspect without supervision.
5. As part of a school inspection (both routine and otherwise), inspectors have, at all reasonable times, a right of entry to the school and other premises which pupils may attend. The governing body and staff of the school must give inspectors access to relevant documents and records (including those on computers) and access to lessons and school activities. It is an offence to intentionally obstruct a member of the inspection team.

## SECTION 5 INSPECTIONS

6. Routine school inspections are carried out under Section 5 of the Education Act 2005. These inspections are frequently referred to as "Section 5 inspections". The scope of the inspection is defined in that statute and is set out in more detail in *The framework for school inspection* (the Framework), which is published by Ofsted.
7. All maintained schools are subject to a Section 5 inspection at least once within approximately five years of their previous inspection. Within this period, Ofsted determines the precise timing of an inspection on the basis of an annual risk assessment and other factors, which are set out in Part A of the Framework. Schools

that it considers to be good or outstanding may have up to five years between inspections whereas those that are satisfactory or inadequate will be inspected at least once approximately every three years\*.

\*To note – Subject to the coming into force of Regulations made under new provisions in the Education Act 2011, certain schools will be exempt from inspection under Section 5. It is intended that ‘exempt’ schools will include maintained primary and secondary schools that were judged to be ‘outstanding’ by Ofsted at their latest Section 5 inspection. Such schools will not be exempt from inspection under Section 8 (see paragraph 22). Ofsted will be able to treat a Section 8 inspection of an exempt school as if it were a Section 5 inspection, for example where it believes the performance of the school has declined, and will be required to do so where requested by the Secretary of State.

8. The Framework sets out the inspection process from notification to publication of the report.
9. Ofsted may inspect without notice, but in most cases schools receive notice of up to two days. Notification will normally be to the head teacher, who is expected to inform the governing body.
10. Where notice is given, the governing body must take reasonable steps to notify:
  - registered parents of registered pupils at the school about 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;
  - where a maintained school does not have a delegated budget (and so the LA is informed of the inspection by Ofsted), the governing body of the school;
  - the Education Funding Agency (EFA) in the case of a school with a sixth-form.
11. Schools should neither arrange lessons or other activities specifically for the inspection, nor cancel or reschedule activities because of the inspection.
12. Inspectors are required specifically to have regard to any views expressed to them by governors, the head teacher, staff, pupils, parents and others that are required to be notified of the inspection.
13. Ofsted must ensure that a copy of the final report is sent to:
  - the governing body;
  - the head teacher;
  - the LA;
  - those who appoint the foundation governors and the appropriate appointing authority, if different; and
  - the YPLA, if the school has a sixth form.
14. When it receives the report, the governing body (or LA if a maintained school does not have a delegated budget) 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 places 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).

15. 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).
16. The governing body should also consider translating the report into other languages where appropriate.

### **INTERIM STATEMENTS**

17. Ofsted has a power to produce and publish an interim statement about a school (commonly known as an "interim assessment"), which confirms that Ofsted does not intend to inspect the school for at least a year. It explains the reasons for this and provides a summary of key information about the school. The fact that a school has received an interim assessment does not prevent Ofsted from inspecting within a year if it deems this necessary.
18. Ofsted will publish an interim assessment where it decides that a school previously judged good or outstanding is not to be inspected within three school years from the end of the school year in which its last Section 5 inspection took place. (The provisions for interim assessments will not apply to 'exempt' schools).
19. A draft version of the interim assessment will be provided to the school to enable it to comment on factual accuracy.
20. Ofsted must ensure that a copy of the final assessment is sent to:
  - the governing body;
  - the head teacher;
  - the LA;
21. Those who appoint the foundation governors and the appropriate appointing authority, if different; and the EFA for England, if the school has a sixth form. When it receives the assessment, the governing body must arrange for:
  - the parents of all pupils to be sent a copy of it;
  - 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; and
  - one free copy to be provided to anyone who asks.

### **OTHER OFSTED INSPECTIONS (SECTION 8 INSPECTIONS)**

22. 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 progress in 'satisfactory' schools and those causing concern.

The outcomes of these visits are published on Ofsted's website.

### **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 section 16 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 Education 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 approximately every five years (This is required by Section 48 of the Education Act 2005 and is commonly referred to as a "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 for the carrying out of Section 48 inspections, 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.

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School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools
Sikh	Network of Sikh Organisations
Seventh-day Adventist	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 DfE Inspections Unit. Claims are made using grant form [DRE1](#).
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.

### **WHAT LEGISLATION DOES THIS REFER TO?**

The Education and Inspections Act 2006

The Education Act 2011

The Education Act 2005

The Education Act 2002

The School Standards and Framework Act 1998

The Education (School Inspection) (England) (Amendment) Regulations 2009: SI 2009/1564

The Education (School Inspection etc.) (England) (Amendment) Regulations 2008: SI 2008/1723

The Education (Investigation of Parents' Complaints) (England) Regulations 2007: SI 2007/1089

The Education (School Inspection) (England) Regulations 2005: SI 2005/2038.

### **FURTHER SOURCES OF INFORMATION**

Ofsted publications include:

School inspection framework, evaluation schedule and guidance for inspecting schools in England under Section 5 of the Education Act 2005 from January 2012

Complaints procedure: Raising concerns and making complaints about Ofsted, published August 2009 (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)

15. Inspection

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## 16 SCHOOLS CAUSING CONCERN

### KEY POINTS

This section relates to “Schools causing concern” - schools which are “eligible for intervention” in accordance with Part 4 of the Education and Inspections Act 2006, as amended (“the 2006 Act”). These are maintained schools that are judged by Ofsted to require special measures or significant improvement (also known as “notice to improve”) or which have not complied with a local authority (LA) warning notice within a specified period (referred to as the “compliance period”) and the LA have given written notice that they propose to exercise their intervention powers under the 2006 Act.

More details can be found in the [Department for Education \(DfE\) Statutory Guidance on Schools Causing Concern 2011](#). LAs must have regard to the 2011 guidance.

This section and the 2011 guidance reflect the legislative position prior to amendments made to the 2006 Act by the Education Act 2011. The statutory guidance is due to be updated in Spring 2012 to reflect those amendments.

### WARNING NOTICES

1. LAs should always try to work constructively with schools causing concern, but where there is insufficient improvement in a school’s performance and it may be necessary to use intervention powers, the LA may give the governing body a warning notice, where the LA is satisfied 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; or
  - the safety of pupils or staff at the school is threatened (by a breakdown of discipline or otherwise).
2. Standards of performance may be judged to be unacceptably low (the first bullet above) in relation to absolute performance; but also in cases where performance is low by comparison with pupils’ past attainment, or with the standards attained by similar pupils at comparable schools.
3. The [Statutory Guidance on Schools Causing Concern](#) sets out in greater detail examples of the circumstances in which a warning notice may be given.
4. A warning notice is a written notice given by an LA to a governing body. It must set out the grounds of concern, including the evidence on which these conclusions are based. The notice must also set out what action the governing body is required to take to remedy the matters within 15 working days from the date of the notice, and set out the action the LA is minded to take if the governing body fails to take the required action. It must also inform the governing body that it may make representations to Ofsted against the warning notice.
 

The governing body has 15 working days following the day that the warning notice is given to comply with the notice or make written representations to Ofsted.
5. Following amendments to the 2006 Act by the Education Act, 2011 the Secretary of State can now, not only direct the local authority to consider giving a warning notice to the governing body of a school in specified terms, where the SoS has concerns

about the standards of performance at the school and/or where there has been a serious breakdown in the way the school is managed or governed which is or is likely to prejudice the standards of performance and/or the safety or staff or pupils is threatened, but also has the power to direct the LA to give a warning notice to a school in those specified terms, where the LA has considered doing so and decided not to.

The Local Authority have 10 working days in which to consider giving the warning notice in specified terms and must inform the SoS of their decision providing reasons. Should the local authority decide to give the warning notice they must do so in 5 working days. Where the LA have decided not to do so, the SoS will consider the LA's reasons and may then direct the LA to give the warning notice, in those specified terms. The LA has 5 working days to comply with that direction. Where a governing body has been given such a notice it still has 15 working days in which to comply with the actions set out in the notice or make representations to Ofsted in that time.

6. If representations are made to Ofsted, they should explain the reasons for the representations, including, where relevant, why the governors disagree with the grounds for giving the warning notice, or why they consider the action proposed to be disproportionate. Ofsted 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 should 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. The school will be eligible for intervention provided that the LA have given notice in writing that they propose to exercise their powers under the 2006 Act.
8. If a governing body does not make representations to Ofsted or if the warning notice is confirmed, the governing body must comply with the warning notice to the LA's satisfaction. Even when the warning notice has been given in the terms specified by the SoS, it is still the local authority who decides if compliance has been secured.
9. If, following the 15 working day period, the LA is not satisfied that the warning notice has been complied with, and the LA have given reasonable notice in writing that they propose to exercise their powers under the 2006 Act, the school will be "eligible for intervention" and the LA (or the Secretary of State) may use their intervention powers (see below). What is considered reasonable will depend on the facts of an individual case, but in exceptional circumstances may be as little as one day where urgent action is required. Most of the LA's intervention powers must be exercised within two months of a school becoming eligible for intervention as a result of non compliance with a warning notice. This includes the power to require the GB to enter into arrangements with a view to improving the performance of the school; the power to suspend the governing body's right to a delegated budget; and the power to appoint additional governors. The only LA intervention power that does not have to be exercised within two months of the school becoming eligible for intervention as a result of non compliance with a warning notice is the power to constitute the governing body as with an Interim Executive Board (IEB).

Following provisions in the Academies Act 2010 the SoS also has powers to make an Academy order in respect of a school which is eligible for intervention under Part 4 of the 2006 Act. - see below.

#### **Action required for maintained schools in Ofsted Categories**

10. The governing body, in consultation with the local authority, should start to consider

what action to take immediately after the oral feedback that Significant Improvement or Special Measures are required.

11. All schools should have a single, integrated development plan. There is no statutory requirement for the school to produce a specific action plan to respond to the judgement of significant improvement or special measures. The school should instead develop its existing school development or improvement plan to set out clearly the actions that will be taken to address the specific issues highlighted by the inspection, and how these will be monitored.

**“The case has become urgent”**

12. 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.

**INTERVENTION POWERS**

13. LAs and the Secretary of State have intervention powers to tackle the problems of schools requiring special measures or significant improvement and those which have failed to comply with a warning notice to the satisfaction of the LA and where the LA have given written notice that they propose to exercise their intervention powers. In all these circumstances a school is “eligible for intervention”.
14. LAs may require a school which is eligible for intervention to:
  - enter into a contract or other arrangement with another school, a further education body, a specified person or body or take steps to create or join a federation, with a view to improving the performance of the school – in these circumstances, the LA must consult the school governing body and, where appropriate the appropriate diocesan authority or other appointing authority for foundation or voluntary schools;
  - appoint additional governors to the governing body. The LA have powers to appoint as many additional governors as they see fit. If appropriate, the LA must consult, the appropriate diocesan authority or other appointing authority for foundation or voluntary schools. A voluntary aided school may also appoint additional governors where the LA have done so. The number will depend on the basis upon which it is eligible for intervention;
  - suspend its right to a delegated budget;
  - constitute the governing body, with the Secretary of State’s consent, with an IEB (see below).
15. The Secretary of State also has powers to appoint additional governors if at any time a maintained school is eligible for intervention and may nominate one of those governors to be the chair of the governing body in place of the previous chair. In these cases, the LA may not exercise its intervention power to appoint additional governors or suspend the governing body’s right to a delegated budget. If a delegated budget has already been suspended, the governing body may ask the Secretary of State to have this suspension revoked.
16. The Secretary of State may constitute the governing body of a school as an IEB. (see below).
17. The Secretary of State may also give a direction to the LA that a school, which is eligible for intervention, (other than where it is eligible for intervention as a result of failing to comply with a warning notice given under section 60A) should be closed on

a given date. He may consider using this power if it is unlikely that the LA will ensure rapid improvement and is unwilling to consider closure.

18. Under provisions set out in the Academies Act 2010 as amended by the Education Act, 2011, the SoS may also decide to make an Academy order. In the case of a foundation or voluntary schools, the SoS must consult the appropriate Diocesan authority or other appointing authority before making the Academy order. Should the SoS makes an Academy order he must send a copy of the Academy order to the same relevant Diocesan authority or other appointing authority, the head teacher of the school, the governing body and the local authority. Should the SoS think an Academy order is not required he must then inform the same relevant Diocesan authority or other appointing authority his reasons for not making one.
19. In the case of voluntary aided schools, where the Secretary of State has exercised his power to appoint additional governors, any power to appoint foundation governors for the purpose of out-numbering the other governors is disappplied.

### **INTERIM EXECUTIVE BOARDS (IEB)**

20. An IEB is the governing body of the school appointed for a temporary period with the specific task of ensuring school improvement. The principal duties of an IEB are to:
- take on the responsibilities of a normally constituted governing body (save for those matters relating to school closure as set out in paragraph 18 of Schedule 6 to the 2006 Act);
  - conduct the school so as to secure a sound basis for improvement;
  - promote high standards of education.
21. 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.
22. The IEB has a right to a delegated budget. If the school's budget has been withdrawn, 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, 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**

23. Unlike a normally constituted governing body, the IEB may only recommend to the LA or to the Secretary of State 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 decides or the Secretary of State directs the LA 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 AND RESUMPTION OF AUTHORITY BY A NORMALLY CONSTITUTED GOVERNING BODY**

24. The transition from an Interim Executive Board (IEB) to post-IEB governance ("the transfer date") will be crucial to sustaining the school's recovery, and must be carefully planned. The new permanent governance arrangements will not normally involve the previous governing body, and there may also be a substantial reduction in size.
25. If the date when the IEB will cease was not given in the notice of establishment, the local authority must give a second notice to the governing body specifying the date



when the IEB will be discontinued. This notice should be copied to all members of the IEB, the Secretary of State and, in the case of foundation or voluntary schools, the diocesan or other appropriate appointing authority.

26. The IEB may have ended at a particular milestone – for example soon after a school has been removed from special measures. In such circumstances, when the school's recovery is well-established but fragile, the executive function of the shadow governing body is particularly important.
27. There is no requirement to establish a shadow governing body but the local authority may decide the need for this on a case by case basis. The shadow governing body will work alongside the IEB for a minimum of six months before taking over full responsibility as the normally constituted governing body of the school. In some cases, it may be necessary for a shadow governing body to work alongside an IEB for longer than six months. A full academic year, for example, would allow the shadow governing body to experience a full year's cycle in the school and see what has influenced decisions and planning.
28. Members of the shadow governing body should be allowed to attend IEB meetings as observers to help smooth the school's return to normal governance arrangements.
29. Although the IEB may delegate specific functions to the shadow governing body during the interim period, the main purpose of this parallel running is to allow IEB members to coach the shadow governing body.
30. Where a local authority have not appointed a shadow governing body, they must ensure that a new instrument of government is made for the school and that on the transfer date the governing body of the school are constituted as a normally constituted governing body in accordance with that new instrument of government.

#### **WHAT LEGISLATION DOES THIS REFER TO?**

The Education and Inspections Act 2006: [Sections 59–73](#), Schedules 6

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# 17 HEALTH, SAFETY AND WELFARE

## KEY POINTS

**This section 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. For information relating to the law on pupil safety on-site and off-site, please see the Department's advice on Health and Safety for Schools: <http://www.education.gov.uk/schools/adminandfinance/healthandsafety/f00191759/departamental-advice-on-health-and-safety-for-schools>.
2. The Government is determined to reduce burdens on schools. We want to simplify health and safety requirements and explain them better. The Government is making it easier for schools to take pupils on trips, removing unnecessary paperwork and taking steps to reduce teachers' fears of legal action. Teachers should be confident that they know best how to look after pupils and keep them safe. The Department's Health and Safety advice (see above link) summarises health and safety law relevant to schools and explains how it affects governing bodies as well as local authorities, head teachers and other school staff. It covers activities that take place on school premises as well as school trips.

### EQUALITY ACT 2010

3. In brief, under section 85 and Schedule 10 to the Equality Act 2010 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.
4. Nothing in the Equality Act 2010 (the 'EA 2010') 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 the EA 2010 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 of discrimination made under the EA 2010. Governors are expected to take whatever action is necessary to ensure they fulfil their responsibilities both under the EA 2010 and under any other legislation that applies to them.
5. With regard to the Health and Safety at Work etc. Act 1974 and related Regulations, the EA 2010 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 EA 2010.

### HOME-TO-SCHOOL TRAVEL AND TRANSPORT

#### Home-to-school transport

6. [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.

7. 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 11, below);
  - with a disability/mobility problems/special needs and who cannot therefore be expected to walk (see paragraph 12, below);
  - 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).

(Schedule 35B to the Education Act 1996 defines the meaning of "eligible child" for the purposes of section 508B.)

### **Low income families**

8. The provision for children from low income families removes 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.
9. The position will be different for primary- and secondary-school-age children from low income families.
- Primary: 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: 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 three or more 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**

10. 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**

11. The statutory walking distances are defined in section 444(5) of the Education Act 1996. They 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**

12. Pupils with a statement of special educational needs (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.

13. 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**

14. LAs must publish their policy on home-to-school transport, including transport to denominational schools, and defend their policy locally (The School Information (England) Regulations 2008).
15. 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 Education (DfE) 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 section 4 of this Guide, Governing body powers, duties and procedures, paragraph 14).

### **FIRST AID**

16. 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.

### **SUPPORTING CHILDREN WITH ADDITIONAL HEALTH NEEDS**

17. Some children have additional health needs and may require medicines, adaptations or support to keep well. Governing bodies are required to develop policies to cover the needs of their own setting. Having an additional health needs policy (or including information in health and safety and/or SEN policies) helps ensure consistent arrangements are in place. The policy should reflect those of the employer. Responsibility for the policy will usually be delegated to the governing body, even when it is not the employer. The policy should address emergency procedures, training, supervision, record-keeping, storage and disposal, and should establish a named staff member to coordinate health care needs and to link with parents.

## **SCHOOL FOOD AND MILK**

### **Provision of milk, meals and other refreshments**

18. LAs may provide milk, meals and other refreshments to pupils at maintained schools and others who receive education at such schools, either on the school premises or at any other place where education is being provided.
19. Except where the legislation provides otherwise, LAs may (but are not required to) charge for any milk, meals and other refreshment provided.

### **“Paid-for” lunch service**

20. LAs must provide paid-for lunches for registered pupils and children who receive relevant funded early years education, where the parents request them and it would not be unreasonable to provide them.

### **Free school lunches**

21. 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 lunch for pupils whose parents receive:
  - Income Support (IS);
  - Income-based Jobseeker’s Allowance (IBJSA);
  - an income-related employment and support allowance (ESA(IR));
  - 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 and Customs, that does not exceed £16,190. (Note: Where a parent receives the Working Tax Credit run-on – the payment someone receives for a further four weeks after they stop qualifying for Working Tax Credit - their children are entitled to free school lunches);
  - the guarantee element of State Pension Credit.

Children who receive an eligible benefit in their own right are also entitled to free school lunches.

### **Governing bodies’ duties that arise from the delegation of funding for school meals**

22. Where a maintained school has a delegated budget which includes an amount for meals and other refreshments, the LAs’ duties to provide paid-for lunches, where requested, and free lunches to those who are entitled, where requested, are transferred to the governing body.

### **Children receiving nursery education**

23. The [Education \(School Lunches\) \(Prescribed Requirements\) \(England\) Order 2003](#) sets out an additional requirement for children who are receiving nursery education\*. These children must be registered pupils receiving nursery education both before and after the lunch period in order to be eligible for free school lunches. (\*Nursery education is full-time or part-time education suitable for children who have not attained compulsory school age.)

### **Nutritional standards**

24. All school food provided in maintained schools must meet the minimum standards set out in the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) Regulations 2007](#), which came into force on 10 September 2007, as amended by the [Education \(Nutritional Standards and Requirements for School](#)

[Food\) \(England\) \(Amendment\) Regulations 2008](#) and the [Education \(Nutritional Standards and Requirements for School Food\) \(England\) \(Amendment\) Regulations 2011](#). 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. These require school lunches to provide prescribed amounts of essential nutrients, vitamins and minerals.

25. 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.
26. Additional guidance to assist with the implementation of the standards is available on the [School Food Trust website](#).
27. Subject to meeting the requirements of the 'Nutritional Standards Regulations', the LA or governing body may decide the content, presentation and cost of school food, set the standard meal allowance for those entitled to free meals.

#### **Facilities for pupils not eating school meals**

28. The LA must provide facilities for the consumption of any meals or other refreshment brought to the school by pupils. The LA can decide what facilities are appropriate. However, it is considered that facilities would include accommodation, furniture and supervision so pupils can eat the food they have brought from home in a civilised way and in suitable conditions. Pupils cannot be charged for using these facilities.
29. The governing body must provide the LA with such facilities as they require to enable them to perform their functions in relation to the provision of meals etc.

#### **Drinking water**

30. The LA or governing body must ensure that pupils have easy access at all times to free, fresh drinking water on school premises.

#### **Milk**

31. LAs and schools are not obliged to offer milk to pupils. However, where they 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(IR));
  - 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 and Customs, that does not exceed £16,190. (Note: Where a parent receives the Working Tax Credit run-on – the payment someone receives for a further four weeks after they stop qualifying for Working Tax Credit - their children are entitled to free school lunches);
  - the guaranteed element of State Pension Credit.

Children who receive an eligible benefit in their own right are also entitled to free school milk.

32. 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](#) as amended by the [Education Act 2002 \(School Meals\) \(Consequential Amendments\) England Regulations 2003](#).

33. Where LAs and schools choose to provide milk, they can also choose to participate in the EU School Milk Subsidy Scheme. 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 the Rural Payments Agency and any claims should be made through the LA.

LAs and schools who participate in the EU subsidy scheme will also automatically be eligible for the UK National Top-up Scheme, which further reduces the cost of milk to parents for primary age pupils.

34. Nursery Milk is provided through the statutory Welfare Food Scheme (WFS). The Nursery Milk Scheme reimburses childcare providers for the full cost of purchasing milk they provide, free of charge, to children in their care. All children under five in a day care or early years setting for two or more hours a day are eligible to receive a free daily drink of milk (1/3 pint). This includes some 4 year olds in reception classes at primary schools. For children under one year old, this is given as infant formula.

### **SCHOOL UNIFORM**

35. 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.
36. 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 the [Equality Act 2010](#) not to discriminate unlawfully on the grounds of sex, race, disability, sexual orientation, gender reassignment and religion or belief.
37. Schools should give high priority to the cost of the uniform and ensure that it 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.
38. Head teachers can discipline pupils for breach of uniform/appearance policy as they have overall responsibility for maintaining discipline. However, the DfE does not consider exclusion to be an appropriate response to breaches of school uniform/appearance policy, except where they are persistent and defiant.

Guidance on school uniform and related policies can be viewed on the DfE website at: <http://www.education.gov.uk/schools/leadership/schoolethos/a0014144/guidance-for-schools-on-school-uniform-and-related-policies>

### **SAFEGUARDING AND PROMOTING THE WELFARE OF PUPILS, INCLUDING CHILD PROTECTION**

39. [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 Education when drawing up those arrangements.



40. “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 has issued guidance). There may also be other safeguarding issues that are specific to the local area. Guidance about this can be found in *Safeguarding Children and Safer Recruitment in Education*, which is available to download from the [Education](#) website.
41. Where there are statutory requirements, governing bodies should ensure their school has policies and procedures in place that satisfy them and which take into account any statutory guidance issued by the Secretary of State.
42. Governing bodies should, in particular, have in place effective child protection policies and procedures that have regard to statutory guidance issued by the Secretary of State, any LA guidance and locally agreed inter-agency procedures.

### **Allegations against staff and volunteers**

43. 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 co-operate fully with police and children’s social services in any child abuse investigations.
44. The Department has issued statutory guidance on dealing with allegations of abuse against teachers and other staff and all schools<sup>7</sup> and FE colleges should have procedures for dealing with allegations. These procedures which meet the requirements of this guidance 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).
45. Detailed advice on dealing with allegations against staff is contained in [Dealing With Allegations Of Abuse Against Teachers And Other Staff: Guidance For Local Authorities, Head Teachers, School Staff, Governing Bodies And Proprietors Of Independent Schools](#), 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. All schools and Further Education Colleges must have regard to it when carrying out duties relating to handling allegations of abuse against teachers and other staff and they should 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 Department for Education website <http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies/g0076914/dealing-with-allegations-of-abuse-against-teachers-and-other-staff>.
46. If an allegation is made against a teacher or other member of staff the quick resolution of that allegation, which is to the benefit of all concerned, should be a clear priority. At any stage of consideration or investigation, all unnecessary delays should be avoided.

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<sup>7</sup> All schools” include Academies, Free Schools, independent schools and all types of maintained schools.

47. In response to an allegation staff suspension should not be the default option. An individual should only be suspended if there is no reasonable alternative. If suspension is deemed appropriate, the reasons and justification should be recorded by the school and the individual notified of the reasons.
48. Allegations that are found to have been malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.
49. Pupils that are found to have made malicious allegations (as opposed to allegations that were not substantiated or were unfounded) are likely to have breached school behaviour policies. The school should therefore consider whether to apply an appropriate sanction, which could include temporary or permanent exclusion (as well as referral to the police if there are grounds for believing a criminal offence may have been committed).
50. The procedures should make it clear that all allegations should be reported **straight away**, normally to the head teacher, principal or proprietor if it is an independent school. The procedures should also identify the person, often the chair of governors, to whom reports should be made in the absence of the head teacher or principal, or in cases where the head teacher or principal themselves are the subject of the allegation or concern. Procedures should also include contact details for the local authority designated officer (LADO) responsible for providing advice and monitoring cases.
51. Chairs of governing bodies are expected to work with head teachers (unless the allegation concerns the head teacher) 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 LADO and head teacher 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.
52. 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.
53. 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**

54. 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 section 11 of this Guide (Staffing), and also in *Safeguarding Children and Safer Recruitment in Education*, which is available to download from the [Education](#) website.

#### **PROMOTING THE WELL-BEING OF PUPILS**

55. The [Education and Inspections Act 2006](#) places a duty on governing bodies to promote well-being. The duty came into effect in September 2007.
56. "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.
57. Good schools play a vital role as promoters of health and wellbeing in their local community and should always maintain good pastoral systems.

### **PROMOTING COMMUNITY COHESION**

58. 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. It is for schools themselves to determine how to fulfil this duty in the light of their local circumstances.

### **PROVISION OF CHILDCARE AND OTHER INTEGRATED SERVICES IN SCHOOLS**

59. 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 no longer has a requirement that it be registered by Ofsted.
60. 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.
61. 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.
62. 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.
63. 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 of the school. Such services would include day care (providing care for children under eight other than on

domestic premises).

64. Further information about the roles and responsibilities of governing bodies in managing community facilities can be found in section 23 of this Guide, Extended activities in schools. Practical guidance and support can also be obtained from the LA.

### SCHOOL SECURITY

Governing bodies, where they are the employer, have overall responsibility to make the school secure as part of their health and safety duties. In community, voluntary controlled and community special schools, these duties ultimately rest with the local authority, as employer, which will usually delegate the associated tasks.

65. All schools have a common law power to bar troublesome adults from the school premises. Additionally, the governing bodies of foundation, voluntary aided and foundation special schools have a power under Section 547 of the Education Act 1996 to authorise someone to remove from school premises any intruder causing a disturbance or nuisance. (In community and voluntary controlled schools this power is exercised by the local authority unless it is delegated to the school.) This power of removal is also extended to independent schools.
66. Sections 550ZA – 550ZD of the Education Act 1996 (inserted by Section 242 of the Apprenticeships, Skills, Children and Learning Act 2009 and Section 2 of the Education Act 2011) provide head teachers and school staff authorised by them with a power to search, without consent, a pupil (or their possessions) whom they reasonably suspect may be possession of a “prohibited item”. In this Act “prohibited items” are: knives and weapons; alcohol, illegal drugs, stolen property, any article that has been or is likely to be used to commit an offence, cause personal injury or damage to property, and any item banned by the school rules which has been identified in the rules as an item which may be searched for . There is also a power to make regulations adding to the list of prohibited items that may be searched for and the Schools (Specification and Disposal of Articles) Regulations 2012 made under this provision have added tobacco and cigarette papers, fireworks and pornographic images to the list of “prohibited items”. Revised DfE guidance Screening, Searching and Confiscation – Advice for head teachers, staff and governing bodies was published on 30 March 2012 and is available via the link below. Governors are expected to notify the head teacher to cover screening and searching pupils in the school’s behaviour policy – see Behaviour and Discipline in Schools: Guidance for governing bodies, also available via the following link: <http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies>

### PLAYGROUND SUPERVISION

67. The DfE does not have a recommendation about the number of adults who should be in charge of pupils during lunch and other breaks. Schools are best placed, on behalf of the employer, to assess any significant risks and to put in enough competent supervisors to manage them.

### USE OF FORCE TO CONTROL OR RESTRAIN PUPILS

68. 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 DfE guidance on *Use of Reasonable Force – Advice for head teachers, staff and governing bodies*. Schools should **not** have a ‘no contact’ policy. Governors are expected to notify the head teacher to cover the power to use reasonable force or make other physical contact with pupils in

the school's behaviour policy – see Behaviour and Discipline in Schools: Guidance for governing bodies. All of these documents are available via the following link:  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies>

## **WHAT LEGISLATION DOES THIS REFER TO?**

### **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 head teachers 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. (And to promote the well-being of pupils at the school (section 21(5) – well-being so far as it relates to the matters mentioned in section 10(2) of the Children Act 2004.)

### **Accidents: reporting and recording**

Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995: SI 1995/3163. From 6 April 2012 these are amended in relation to staff though not to pupils. See <http://www.hse.gov.uk/riddor/index.htm>

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

Please note these are subject to repeal in the course of 2012/13 at least in relation to England and possibly in Scotland.

### **Power of members of staff to search school pupils without consent for a prohibited item**

The Education Act 1996: Section 550ZA – ZD inserted under  
<http://www.legislation.gov.uk/ukpga/2009/22/part/11/crossheading/power-to-search-for-prohibited-items>. Prohibited items are knives and weapons, alcohol, illegal drugs and stolen items.

Revised DfE guidance on *Screening, Searching and Confiscation* - Advice for head teachers, staff and governing bodies is available via the following link:  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies/f0076897/screening-searching-and-confiscation>. This also includes advice on the school's power to screen at random.

### **First aid**

The Health and Safety (First Aid) Regulations 1981

### **Nutritional standards**

Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007: SI 2007/2359

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

### **Other**

The Children Act 1989: Sections 27 and 47

The Children Act 2004 section 10(2)

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

## **FURTHER SOURCES OF INFORMATION**

### **Health and safety**

The [Health and safety section](#) of the DfE website

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 DfE Publications. Telephone 0845 602 2260

[Reporting of School Accidents](#) (HSE)

### **Educational visits including adventure activities**

The [Health and Safety section](#) of the DfE website under Schools/Administration and Finance

### **First aid**

[Guidance on First Aid for Schools: A Good Practice Guide](#). Also available free on request from DfE 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) at <http://www.cleapss.org.uk/>.

### **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 DfE 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 DfE website, which also contains further advice and examples of good practice intended to complement the guidance above.

### **School uniform**

DfE guidance to schools on school uniform and related policies (published October 2007) is available on the DfE website at:

<http://www.education.gov.uk/schools/leadership/schoolethos/a0014144/guidance-for-schools-on-school-uniform-and-related-policies>

### **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. Health, Safety and Welfare

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# 18 EQUALITIES

## KEY POINTS

This section 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 Equality Act 2010 prohibits discrimination based on sex, gender reassignment, race, disability, religion or belief, sexual orientation, pregnancy and maternity 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. This section explains some differences in the way that different types of discrimination are dealt with, and provides links to further guidance.

This section 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.

## 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
  - pregnancy and maternity
  - gender reassignment
  - age (in relation to employment).
3. Definitions of different types of discrimination are covered in the DfE advice to schools on the Equality Act:  
<http://www.education.gov.uk/schools/pupilsupport/inclusionandlearnersupport/inclusion/equalityanddiversity/a0064570/the-equality-act-2010>

## DISCRIMINATION AGAINST JOB APPLICANTS OR EXISTING MEMBERS OF STAFF

4. 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.

5. 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**

6. There are specific legal provisions which recognise that there may be some narrow circumstances where employers will be allowed to treat staff, or applicants, differently because of a particular protected characteristic. These are based on that particular characteristic (such as being of a specific sex or age) being a genuine occupational requirement (GOR) for a particular job. The burden of establishing that a GOR exists 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.
7. Schools should bear in mind that a GOR must be what it says: genuine and a requirement. 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 genuine requirement for someone of that particular sex, sexual orientation, race or age to fill the post. The special exceptions to the Equality Act which exist with regard to faith schools are set out in section 11 of this guide.

### **DISCRIMINATION AGAINST A CHILD SEEKING ADMISSION OR AN EXISTING PUPIL**

8. The Equality Act makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or potential pupil in relation to admissions, in the way it provides education for pupils, in the way it provides pupils access to any benefit, facility or service, or by excluding a pupil or subjecting them to any other detriment.
9. The “responsible body” is the governing body or the local authority for maintained schools in England and Wales, the education authority in the case of maintained schools in Scotland, and the proprietor in the case of independent schools, Academies or non-maintained special schools. In practice, this means the responsible body is liable for the actions of any persons acting on their behalf (including employees of the school) unless it can show that it has taken all reasonable steps to stop the individual from doing the discriminatory action or from doing anything of that kind.
10. The issues around what constitutes discrimination against pupils or potential pupils is covered in more detail in the DfE advice to schools on the Equality Act:  
<http://www.education.gov.uk/schools/pupilsupport/inclusionandlearnersupport/inclusion/equalityanddiversity/a0064570/the-equality-act-2010>

### **PUBLIC SECTOR EQUALITY DUTY AND SPECIFIC DUTIES**

11. The Equality Act 2010 introduced a single Public Sector Equality Duty (PSED) on public bodies including maintained schools and Academies which extends to all protected characteristics - race, disability, sex, age, religion or belief, sexual

orientation, pregnancy and maternity and gender reassignment. The Act has also introduced specific duties, which are designed to help public authorities to meet their obligations under the PSED.

12. This PSED came into effect in April 2011. It has three main elements. In carrying out their functions, public bodies are required to have due regard to the need to: eliminate discrimination and other conduct that is prohibited by the Act, advance equality of opportunity between people who share a protected characteristic and people who do not share it and foster good relations across all characteristics between people who share a protected characteristic and people who do not share it. The Specific Duties require schools to publish information demonstrating how they are meeting the aims of the general duty and to prepare and publish measurable equality objectives.
13. The Public Sector Equality Duty and the Specific Duties are covered in more detail in the DfE advice to schools on the Equality Act:  
<http://www.education.gov.uk/schools/pupilsupport/inclusionandlearnersupport/inclusion/equalityanddiversity/a0064570/the-equality-act-2010>

### **AGE DISCRIMINATION**

14. The Equality Act 2010 makes age discrimination by employers unlawful. Age discrimination differs slightly from other grounds in that both direct and indirect age discrimination are not unlawful if the treatment is “objectively justified” – that is, shown to be a proportionate means of achieving a legitimate aim.
15. The Equality Act allows 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 does not apply to the treatment of pupils in schools.)

### **ENFORCEMENT**

16. 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 Act) may be legally responsible for discriminatory acts against employees or applicants for jobs, including acts carried out by the head teacher or other members of staff. Employment-related cases are dealt with by Employment Tribunals.
17. Discrimination complaints involving issues such as the admission of, or equal opportunities for, pupils will generally be taken up first with the head teacher. They may then be referred to the governing body and/or the LA. If the school or LA cannot sort out the problem and a discrimination case is brought, it will be dealt with by the County Courts. (Different procedures apply in relation to pupils and disability – see paragraph 18, below.)
18. Claims of disability discrimination are heard by:
  - the Special Educational Needs and Disability Tribunal in relation to most educational claims;
  - independent appeal panels in relation to admissions;
  - an Employment Tribunal in relation to employment matters;
  - the County Court in relation to the provision of goods, facilities and services.

19. The Equality and Human Rights Commission (EHRC) has powers to enforce the Public Sector Equality Duty by issuing a compliance notice to order the school to meet the duty within a certain timescale.
20. Much of the Equality Act 2010, 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 written to reflect EU law.

### **Who is the employer?**

21. Where the school is a community school or a community special school, the LA is the employer of all staff.
22. 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.
23. 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](#).

### **WHAT LEGISLATION DOES THIS REFER TO?**

[The Equality Act 2010](#)

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

[The Human Rights Act 1998](#)

[The Equality Act 2006](#)

### **FURTHER SOURCES OF INFORMATION**

The EHRC has responsibilities in relation to the entire body of discrimination law and can issue statutory Codes of Practice and non-statutory guidance. Non statutory guidance is currently being developed for schools.

For further information on the role of the EHRC and to access their Codes of Practice and advice please refer to their website: <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>.

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. Further information can be accessed from the ACAS website: [www.acas.org.uk](http://www.acas.org.uk).

## **19 ORGANISATIONAL CHANGES TO THE SCHOOL**

This section is being prepared and will follow.

## 19. Organisational Changes to the School

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## 20 TRUST SCHOOLS

### KEY POINTS

The **Education and Inspections Act 2006** put 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 section 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 statutory guidance.

### TRUST SCHOOLS

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. A Trust school operates within the same frameworks as other maintained schools. 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.
2. 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.
3. The Trust school retains the stakeholder model of other maintained schools involving parents, staff, community and LA governors and the governing body remains responsible for all major decisions about the school and its future. 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 can strengthen the whole governing body and make a contribution to the school's ethos.

### ACQUISITION OF A TRUST/ACQUIRING A MAJORITY OF FOUNDATION GOVERNORS

4. Following the introduction of the **Education and Inspections Act 2006** schools could become Trust schools by acquiring a Trust. Having completed the necessary statutory process, a governing body in its instrument of government may allow for the Trust to appoint a majority of governors to the governing body (otherwise the Trust will appoint a minority of the governing body).
5. 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 but these statutory processes may all be run concurrently.
6. 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.

7. Even if it would not be possible (or desirable) for a school with an existing Trust 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. 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 character as a Trust school.

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### **The statutory process**

8. 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.
9. 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. The governing body must comply with the Regulations and must have regard to statutory guidance issued by the Secretary of State for Education.
10. 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.
11. LAs may, having regard to statutory guidance issued by the Secretary of State, 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

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- the governing body has failed to have regard to responses to the consultation; or
  - the Trust will have a negative impact on standards.
12. Whether the proposals are determined by the governing body or the Schools Adjudicator, the decision maker must have regard to statutory guidance issued by the Secretary of State.
13. 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.
14. 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 section 21, Parent Councils.)

### TRUSTS, LEGAL REQUIREMENTS

15. 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.
16. 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.
17. Certain categories of persons are disqualified from being trustees under the [School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#). 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.
18. An individual subject to an Individual Voluntary Arrangement (IVA) is also precluded from being a trustee under [Section 72\(1\) of the Charities Act 1993](#). Under this legislation, disqualification applies to those who:
- have been convicted of any offence involving deception or dishonesty; or
  - are undischarged bankrupts; or
  - have made compositions or arrangements with their creditors from which they have not been discharged; or
  - have at any time been removed by the Charity Commissioners or a Court from being a trustee because of misconduct or mismanagement; or
  - are disqualified from being company directors; or
  - are subject to a disqualification order or disqualification undertaking.

For further details go to the [Charity Commission's website](#).

19. The Secretary of State has the power to remove and replace individual trustees in

certain prescribed circumstances.

## **REMOVAL OF A TRUST/REDUCTION IN THE NUMBER OF FOUNDATION GOVERNORS**

20. Though a relationship with a Trust is designed to be lasting, a governing body of a school may remove the Trust or 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**

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

26. When a Trust is removed, the school becomes a foundation school without a foundation.

**WHAT LEGISLATION DOES THIS REFER TO?**

The Education and Inspections Act 2006 Sections 18–22; 24–27; 33–34; and Schedule 2

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007: SI2007/1289

The School Organisation (Requirements as to Foundations) (England) Regulations 2007: SI 2007/1287

The School Organisation (Foundation Special Schools) (Application of Provisions Relating to Foundations) (England) Regulations 2007: SI 2007/1329

The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007: SI 2007/3475

The School Governance (Parent Councils) (England) Regulations 2007: SI 2007/1330

Section 21 of the School Standards and Framework Act 1998

Section 72(1) of the Charities Act 1993

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## 21 PARENT COUNCILS

### KEY POINTS

This section 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 section 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 head teacher 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 on the [DfE website](#)

### **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 in schools;
  - 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 in schools such as childcare, lifelong learning

opportunities, healthcare and social services provision and should take these opportunities to seek their views.

26. Governing bodies should be able to demonstrate 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.

#### **WHAT LEGISLATION DOES THIS REFER TO?**

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

#### **FURTHER SOURCES OF INFORMATION**

Guidance on Parent Councils is available on the [DfE website](#).



## 22 CONTROL AND COMMUNITY USE OF SCHOOL PREMISES

### KEY POINTS

**This section explains that maintained school premises can be used for extended activities and community services. Details are also given about Transfer of Control Agreements (TofCAs).**

### USE OF PREMISES FOR EXTENDED ACTIVITIES AND COMMUNITY SERVICES

1. Schools can accommodate extended and community services if they wish to do so, 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. School governing bodies may charge for the provision of extended and community services (see section 27(3) of Education Act 2002). This is subject to the restrictions on charging for education and admission in the Education Act 1996. How charges are applied is a matter for individual governing bodies.
2. Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. The term “purposes of the school” would normally be construed as including all activities that bring an educational benefit to pupils at the school. The term also includes expenditure on pupils registered at other maintained schools and, from 1 April 2011, has also included expenditure on community facilities provided under section 27 of the Education Act 2002. The local authority’s scheme for financing schools should have a section on the financial framework within which schools providing community facilities must work; the Department for Education has issued statutory guidance on the content of LAs’ schemes.
3. Governing bodies can charge for the provision of extended and community services. 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.
4. 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.
5. The LA may give a direction to the governing body of a voluntary aided school to provide accommodation free of charge for the education or welfare of young people, if the LA is satisfied that there is no other suitable accommodation available on any weekday when it is not needed for the purposes of the school (subject to a maximum of three days in any week).
6. 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.

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### **TRANSFER OF CONTROL AGREEMENTS**

7. Governing bodies can enter into a Transfer of Control Agreement (TofCA) as a way of sharing control of the school premises with another body, or transferring 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.
8. However, it may not be necessary for a school to enter into a TofCA to enable another organisation to use their premises. Alternatives can include: a school retaining overall control of the premises, while subletting use of part of their premises to another organisation; or a school entering into a Service Level Agreement with another organisation.

### **WHAT LEGISLATION DOES THIS REFER TO?**

The Education Act 2002: sections [27](#) and [28](#)

The School Standards and Framework Act 1998 (SSFA 1998): [section 40](#) and [Schedule 13](#) – these provisions have been repealed but the repeals have not yet been commenced so they remain in force for the time being. Section 31 of the Education Act 2002 (which has not yet been brought into force) and regulations made under that section will eventually replace section 40 and Schedule 13.

## 23 EXTENDED ACTIVITIES IN SCHOOLS

### KEY POINTS

This section explains the governing body's role in deciding what, if any, extended activities to offer and in making decisions on the form any such activities should take. If the governing body decides to offer extended activities, it should:

- ensure that extended activities or services benefit the public and any profits made are reinvested in the service or in the school ;
- ensure that in providing extended activities or services, these do not conflict unduly with their statutory duties in particular their duty to promote high educational achievement in the school ;
- consult with the Local Authority (LA), school staff, parents of its school's registered pupils and anyone else the schools considers appropriate, given the nature of the service, including some or all of the registered pupils where appropriate, particularly in view of their age and understanding;
- have regard to any advice given by the LA and to guidance issued by the Department for Education (DfE);
- ensure that any childcare for children under the age of three provided directly by the school is registered with Ofsted and any other childcare provided is registered where necessary or appropriate.

### 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 or people who live and work in the local community. This power is in addition to governing bodies' powers and responsibilities regarding the control and community use of school premises (see section 22, Control and community use of school premises).
2. "Charitable purposes" are defined by the Charities Act 2006 and may cover such services and activities as childcare, adult and family learning, health and social services, parenting support and other facilities of benefit to the local community, such as access to information and communication technology (ICT) or sports facilities. This is not an exhaustive list and a wide range of services will be covered within the definition of charitable purposes. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

#### Restrictions on extended activities

4. A governing body cannot engage in any activity that might interfere with its duty to promote 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 in section 27, the governing body must consult with the Local Authority (LA), school staff, and parents of its school's registered pupils. The governing body can also consult some or all of the registered pupils where the governing body considers this to be appropriate in view of their age and understanding and where the exercise of

the power would affect those pupils and anyone else that the governing body consider appropriate.

### **OFSTED REGISTRATION AND INSPECTION FOR CHILDCARE FACILITIES**

7. Childcare that is not provided directly by a school must be registered by Ofsted under the [Childcare Act 2006](#). Childcare provided by the school for children from birth to age 3 must also be registered by Ofsted on the Early Years Register.
8. Childcare provided by the school for children over three, where at least one of the children is a registered pupil of the school, does not have to be separately registered. However, a school can register its provision on the voluntary part of the Ofsted Childcare Register, under the [Childcare Act 2006](#). 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.

### **DISABILITY DUTIES in relation to EXTENDED SERVICES**

9. The [Equality Act 2010](#) (“The Act”) has replaced all existing equality legislation including the [Disability Discrimination Act 1995](#) . The Equality Act imposes the same duties on schools as the previous legislation in relation to their position as employers (part 5); as service providers (Part 3); and as education providers (Part 6). When governors of schools provide extended services, they will need to consider their duties under the Act and, particularly, whether the proposed extended services impact upon their functions and responsibilities towards their pupils, users of these services or their employees
10. When services are provided by a third party on schools’ premises, either independently of the school or on behalf of the school, governors will wish to establish who will be regarded as the service provider with the responsibility to make “reasonable adjustments” and/or access improvements for disabled users, pupils or employees.
11. For more guidance on meeting Equality duties, please go to section 18.

### **WHAT LEGISLATION DOES THIS REFER TO?**

The [Education Act 2002](#): Sections 27 and 28; [Schedule 1, Paragraph 3\(1\)](#); and [Schedule 3, Paragraphs 2–5](#)

The [Childcare Act 2006](#)

## 24 CHARGING FOR SCHOOL ACTIVITIES

### KEY POINTS

This section 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. Schools must ensure that they inform parents on low incomes and in receipt of the benefits listed in paragraph 14 of this guide of the support available to them towards the cost of school visits.

### EDUCATION

1. School governing bodies and local authorities **cannot** charge for:
  - an admission application to any maintained school or Academy;
  - education provided during school hours (including the supply of any materials, books, instruments or other equipment);
  - education provided outside school hours if it is part of the National Curriculum<sup>8</sup> or part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school, or part of religious education;
  - tuition for pupils learning to play musical instruments if the tuition is required as part of the National Curriculum, or part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school, or part of religious education;
  - entry for a prescribed public examination, if the pupil has been prepared for it at the school; and
  - examination re-sit(s) if the pupil is being prepared for the re-sit(s) at the school<sup>9</sup>.
2. Schools and local authorities **can** charge for:
  - any materials, books, instruments, or equipment, where the child's parent wishes him to own them;
  - optional extras (see below); and
  - music and vocal tuition, in limited circumstances (see paragraphs 15-18).

### Optional Extras

3. Charges may be made for some activities that are known as “optional extras”. Where an optional extra is being provided, a charge **can** be made for providing materials, books, instruments, or equipment. **Optional extras are:**
  - education provided outside of school time that is not:
    - a) part of the National Curriculum;
    - b) part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school; or

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<sup>8</sup> It should be noted that ‘part of the National Curriculum’ is not restricted to learning outside the classroom experiences that are specifically subject based (e.g. geography or science fieldwork) and include, for example, activities designed to fulfil requirements under the National Curriculum ‘inclusion statement’ (e.g. developing teamwork skills).

<sup>9</sup> However, if a pupil fails, without good reason, to meet any examination requirement for a syllabus, the fee can be recovered from the pupil's parents.

- c) part of religious education.
  - examination entry fee(s) if the exam is on the list and the pupil was not prepared for it at the school;
  - transport that is not required to take the pupil to school or to other premises where the local authority/governing body have arranged for the pupil to be provided with education; and
  - board and lodging for a pupil on a residential visit.
4. In calculating the cost of optional extras an amount may be included in relation to:
- any materials, books, instruments, or equipment provided in connection with the optional extra;
  - non-teaching staff;
  - teaching staff engaged under contracts for services purely to provide an optional extra, this includes supply teachers engaged specifically to provide the optional extra; and
  - the cost, or a proportion of the costs, for teaching staff employed to provide tuition in playing a musical instrument, where the tuition is an optional extra.
5. Any charge made in respect of individual pupils must not exceed the actual per pupil cost of providing the optional extra activity, divided equally by the number of pupils participating. It must not therefore include an element of subsidy for any other pupils wishing to participate in the activity whose parents are unwilling or unable to pay the full charge.
6. Furthermore in cases where a small proportion of the activity takes place during school hours the charge cannot include the cost of alternative provision for those pupils who do not wish to participate. Therefore no charge can be made for supply teachers to cover for those teachers who are absent from school accompanying pupils on a residential visit.
7. Participation in any optional extra activity will be on the basis of parental choice and a willingness to meet the charges. Parental agreement is therefore a necessary pre-requisite for the provision of an optional extra where charges will be made.
8. All three and four year olds are entitled to 15 hours a week of free early years provision for 38 weeks of the year. Schools receive funding to cover the cost of making this provision from the local authority through the early years single funding formula. A school's governing body can make additional provision available to its pupils (and other children) as part of the community services and facilities it provides under Section 27 of the Education Act 2002 (for further information see section 22 Control and Community Use of School Premises).

### **Voluntary Contributions**

9. Nothing in legislation prevents a school governing body or local authority from asking for voluntary contributions for the benefit of the school or any school activities. However, if the activity cannot be funded without voluntary contributions, the governing body or head teacher should make this clear to parents at the outset. The governing body or head teacher **must** also make it clear to parents that there is no obligation to make any contribution.
10. It is important to note that no child should be excluded from an activity simply because his or her parents are unwilling or unable to pay. If insufficient voluntary contributions are raised to fund a visit, then it must be cancelled. Schools must make sure that they make this clear to parents. If a parent is unwilling or unable to pay, their child must still be given an equal chance to go on the visit. Schools should make it clear to parents at the outset what their policy for allocating places on school visits

will be.

11. When making requests for voluntary contributions to the school funds, parents must not be made to feel pressurised into paying as it is voluntary and **not compulsory**. Schools should avoid sending colour coded letters to parents as a reminder to make payments into the school or maintenance funds. Schools should also ensure that direct debit or standing order mandates are not sent to parents when requesting contributions.

### Residential Visits

12. Schools **cannot** charge for:
- education provided on any visit that takes place during school hours;
  - education provided on any visit that takes place outside school hours if it is part of the National Curriculum, or part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school, or part of religious education; and
  - supply teachers to cover for those teachers who are absent from school accompanying pupils on a residential visit.
13. Schools **can** charge for:
- board and lodging and the charge must not exceed the actual cost.
14. When a school informs parents about a forthcoming visit, they should make it clear that parents who can prove they are in receipt of the following benefits will be exempt from paying the cost of board and lodging:
- Income Support (IS);
  - Income-Based Jobseekers Allowance (IBJSA);
  - Support provided under Part VI of the Immigration and Asylum Act 1999;
  - Child Tax Credit, provided that Working Tax Credit is not also received and the family's income (as assessed by Her Majesty's Revenue and Customs) does not exceed £16,190 (Financial Year 2012/13)
  - State Pension Credit, where the parent is in receipt of the guarantee credit; and
  - Income-Related Employment and Support Allowance.

### Music Tuition

15. Although the law states that all education provided during school hours must be free, music tuition (i.e. tuition in singing and/or in playing a musical instrument) is an exception to this rule.
16. The Education and Inspections Act 2006 amended section 451 of the Education Act 2006 to enable the Secretary of State to specify in regulations circumstances where charging can be made for music tuition (Charges for Music Tuition) (England) Regulations 2007.
17. Charges may 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 during school hours, if it is provided at the request of the parent. No charge may be made in respect of a 'looked after' pupil. Guidance about these charging for music tuition can be viewed on the [DfE website](#).
18. 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).

### **Transport**

19. Schools **cannot** charge for:

- transporting registered pupils to or from the school premises, where the local education authority has a statutory obligation to provide transport;
- transporting registered pupils to other premises where the governing body or local education authority has arranged for pupils to be educated;
- transport that enables a pupil to meet an examination requirement when he has been prepared for that examination at the school; and
- transport provided in connection with an educational visit.

Guidance on school travel is available on the [DfE website](#)<sup>10</sup>.

### **Charging and Remissions Policies**

20. No charges can be made unless the governing body of the school or local authority has drawn up a charging policy and a remissions policy giving details of the optional extras or board and lodging that they intend to charge for. 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.

21. The remissions policy must set out any circumstances in which the school or local authority propose to remit (wholly or partly) any charge which would otherwise be payable to them in accordance with their charging policy. For example, a school may decide to provide an Italian language evening class as an optional extra. The governing body may decide to reduce the cost for those children whose parents are in receipt of certain benefits.

### **Education partly during school hours**

22. Where an activity takes place partly during and partly outside of school hours, there is a basis for determining whether it is deemed to take place either inside or outside school hours. However, a charge can only be made for the activity outside school hours if it is not part of the National Curriculum, not part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school and not part of religious education.

### **Non-residential activities**

23. If 50% or more of the time spent on the activity occurs during school hours, it is deemed to take place during school hours. Time spent on travel counts in this calculation if the travel itself occurs during school hours. School hours do not include the break in the middle of the day.

24. Where less than 50% of the time spent on an activity falls during school hours, it is deemed to have taken place outside school hours. For example, an excursion might

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<sup>10</sup> <https://www.education.gov.uk/publications/standard/publicationdetail/page1/DFES-00373-2007>



require pupils to leave school an hour before the school day ends, but the activity does not end until late in the evening.

### **Residential visits**

25. If the number of school sessions taken up by the visit is equal to or greater than 50% of the number of half days spent on the visit, it is deemed to have taken place during school hours (even if some activities take place late in the evening). Whatever the starting and finishing times of the school day, Regulations require that the school day is divided into 2 sessions. A “half day” means any period of 12 hours ending with noon or midnight on any day.

#### **Example 1: Visit during school hours**

26. Pupils are away from noon on Wednesday to 9pm on Sunday. This counts as 9 half days including 5 school sessions, so the visit is deemed to have taken place during school hours.

#### **Example 2: Visit outside school hours**

27. Pupils are away from school from noon on Thursday until 9pm on Sunday. This counts as 7 half days including 3 school sessions, so the visit is deemed to have taken place outside school hours.

### **ACTIVITIES NOT RUN BY THE SCHOOL OR LOCAL AUTHORITY**

28. 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 DfE’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 6\(4\)\(a\) of the Education \(Pupil Registration\) \(England\) Regulations 2006](#) (as amended).

### **SCHOOL MINIBUSES**

29. 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.
30. 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.
31. Further information is available from LAs or the regional Traffic Commissioners.

### **WHAT LEGISLATION DOES THIS REFER TO?**

The Education Act 1996: [Sections 402, 449–462](#)

The [Education \(Prescribed Public Examinations\) \(England\) Regulations 2010](#): SI

2010/2327

The Education (Residential Trips) (Prescribed Tax Credits) (England) Regulations 2003: SI 2003/381, as amended by SI 2005/1014 and SI 2011/730

The Education (Pupil Registration) (England) Regulations 2006 SI 2006/1751 as amended by SI 2010/1725 and SI 2011/1625

The Charges for Music Tuition (England) Regulations 2007 SI 2007/2239

#### **FURTHER SOURCES OF INFORMATION**

Information on passenger transport provided by volunteer groups can be found in guide PSV 385 on the [Manuals and Guides](#) Department for Transport website, also 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 and appeals code

## 25 SCHOOL COMPANIES

### KEY POINTS

**This section gives details of how, in certain circumstances, governing bodies of maintained schools can form school companies, or take part in forming school companies with other governing bodies and/or prescribed third parties. It explains the roles and responsibilities of governing bodies in these circumstances.**

1. [Sections 11 and 12 of the Education Act 2002](#) enable the governing bodies of maintained schools to, either independently or with other governing bodies and/or prescribed third parties, form companies to undertake certain specified activities. Doing so enables schools to purchase goods and services collectively, to provide services or facilities to other schools, or to exercise functions which a Local Authority (LA) is able to contract out. The Act also gives governing bodies the power to invest in, or become a member of, such companies.
2. Use of these powers is optional. An example of where a governing body might wish to use the power to form a school company is where it judges that a joint vehicle with other schools would facilitate collective activity.
3. The existence of a company enables individual school governing bodies to enter into contracts as a group and to pool resources effectively without being part of a formal structural collaboration such as a federation. Schools are able to follow a well-established procedure for forming a company and have considerable flexibility in how the company is run.
4. Where a company is formed, the governing body remains responsible for the running of the school: a school and a company are separate legal entities. It follows that if the company gets into financial trouble, there will be no risk to the school's assets or the employment of the school's staff. Teachers will not be expected to transfer to the company.
5. Governing bodies must have the consent of their LAs to form or join a company, but this can only be refused on certain specified grounds relating to the school's performance or financial management. Each company will have a supervising authority (a local authority) to ensure that the company is run on a sound financial footing.
6. School companies can make a profit. The articles of the company must state whether profits may be distributed to its members according to procedures set out in the articles and/or to further the aims of the company.

### WHAT LEGISLATION DOES THIS REFER TO?

[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.

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## 26 PROVIDING INFORMATION

### KEY POINTS

This section details the roles and responsibilities of governing bodies, head teachers, Local Authorities (LAs) and other educational establishments in providing information to each other, parents, pupils and the Secretary of State for Education. The main types of information covered include careers guidance, arrangements for pupils with special educational needs (SEN), the school prospectus, 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 2000](#) and [Data Protection Act 1998](#) and sets out their responsibilities under these Acts.

### GENERAL

1. School governors will receive information from the Local Authority (LA), the head teacher and the Department for Education (DfE). 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 head teacher; and some to the DfE and other government bodies such as Ofsted.
3. Schools should register directly with the [Information Commissioner's Office \(ICO\)](#) to notify the school's nominated 'data controller' under the [Data Protection Act 1998 \(DPA\)](#). Advice can be obtained from the ICO.
4. Any reference to parents in this section 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 Guide, Annex 1).

### INFORMATION FROM THE GOVERNING BODY TO THE SECRETARY OF STATE FOR EDUCATION

5. The governing body must give the Secretary of State details of the results of national curriculum assessments, including the Phonics Screening Check, taken by pupils, for the preparation of the national analyses published by the DfE.
6. Each year the governing bodies of all maintained schools have to provide information to be used in the publication of the DfE's secondary school and primary school Performance Tables. The DfE provides information on pupils included in calculation of school level performance measures, including test and examination results, via a secure website, asking schools to either confirm that the data is correct or to submit amendments. Amendment requests are reviewed and amendments which have been accepted are used in the recalculation of the Performance Tables, which can be found on the DfE website.
7. There are other statutory data provision requirements on schools to provide information to the Secretary of State when required to do so. These include the key individual level returns, the *School Census* and the *School Workforce Census*. Full details for statutory data returns can be found at <http://www.education.gov.uk/schools/adminandfinance/schooladmin/ims>

### **INFORMATION SUPPLIED TO THE GOVERNING BODY BY THE LOCAL AUTHORITY**

8. 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.
9. The LA supplies the governing body and the head teacher with financial information concerning the school.

### **INFORMATION FROM THE GOVERNING BODY TO THE LOCAL AUTHORITY**

10. 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.
11. The governing body must make available to the LA details of the arrangements made for pupils with special educational needs (SEN). Governing bodies of all schools, including community and foundation special schools and Academies and Free Schools must on request, 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.
12. 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 [SEN Code of Practice](#).
13. 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.

### **INFORMATION FROM THE HEAD TEACHER TO THE GOVERNING BODY**

14. The head teacher must give the governing body any information requested by it for the purpose of the exercise of any of its functions.

### **GOVERNING BODY'S RESPONSIBILITY TO TRANSLATE DOCUMENTS**

15. 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.

### **INFORMATION FROM THE GOVERNING BODY TO PARENTS**

#### **School prospectus**

16. [The School Information \(England\) Regulations 2008](#) (SI 2008/3093) requires schools to publish information to help parents make informed choices when making school applications. [The School Information \(England\) \(Amendment\) Regulations 2012](#) (SI 2012/1124) remove the requirement upon governing bodies of maintained schools to publish the annual prospectus and instead, a new obligation will be introduced requiring schools to publish specified information on a website. These changes will

come into effect in September 2012. Schools may stop writing and publishing a prospectus for 2012 but retain the freedom to choose whether they wish to continue marketing themselves in this way. Academies and Free Schools are required to publish information through their funding agreements. The new model funding agreement will require Academies and Free Schools to publish the same information as maintained schools. Local authorities will continue to have a duty to ensure that parents receive the support they need to work through the admissions process. These proposed changes to the School Information Regulations will not change the duty for local authorities to produce a composite prospectus every year, or for schools to supply required information in a way that is easy to understand. More information is available at the DfE Reducing Bureaucracy website:

<http://www.education.gov.uk/schools/toolsandinitiatives/cuttingburdens/b0075738/reducing-bureaucracy/requirements/changestoschoolinformationregulations>

### **School Profile**

17. Following the passage of the Education Act 2011, the duty on schools to prepare and publish a School Profile was removed from February 2012 (by virtue of section 32 of the Act), so a School Profile is no longer required.

### **Governors' Annual Report to Parents (Maintained Nursery Schools)**

18. Since 1 September 2005 only maintained nursery schools have been required to produce a Governors' Annual Report to Parents. No schools (including maintained nurseries) are required to hold an annual parents' meeting but they may do so if they wish.
19. 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**

20. Under Sections 110 and 111 of the School Standards and Framework Act 1998, the governing body of every maintained school and Academy, is required to have in place a written home-school agreement. The Department revised their statutory guidance on the issue in June 2011 which schools need to be mindful of when drafting their agreements. This guidance can be accessed at <http://www.education.gov.uk/schools/pupilsupport/parents/involvement/hsa>.

### **Pupils' records**

21. The Education (Pupil Information) (England) Regulations 2005 (and subsequent amendments set out in the Education (Pupil Information) (England) (Amendment) Regulations 2008) (Pupil Information Regulations) set out the arrangements whereby maintained schools are required to keep curricular and educational records for each pupil. The Regulations explain the requirement on schools to keep and update pupils' curricular records; ensure that parents can have access to their children's educational records; report at least annually on their pupils' educational and curricular achievements; provide a report to school leavers; and ensure that key information from pupils' records is transferred securely (e.g. using the department's school 2 school system (DfE's S2S) and common transfer file (CTF)) when pupils change schools.

### **The Curricular Record**

22. The curricular record is defined in the Pupil Information Regulations as a formal record of a pupil's academic achievements, their other skills, abilities and progress in school. The school's governing body is responsible for ensuring a curricular record is kept for every pupil registered at the school and that this is updated at least once every school year.

### **The Educational Record**

23. The statutory definition of a pupil's educational record is set out in the Pupil Information Regulations. The pupil's educational record will include their curricular record, any statement of special educational needs, Personal Education Plan (if appropriate) and any record of information relating to the child which has been processed by or on behalf of the governing body of, or a teacher at, the school; and comes from or was supplied on behalf of a teacher at the school, any employee of the local authority, the pupil or the pupil's parent. An educational record does not include information which is processed by a teacher solely for the teacher's own use.

### **The Personal Education Plan**

24. A Personal Education Plan (PEP) is a document that is initiated by children's social services when a child is taken into care. A PEP is maintained by the child's school and provides a record of their educational needs, objectives, progress and achievements. A PEP will form part of a pupil's educational record.

### **Annual pupil reports**

25. The Pupil Information Regulations require head teachers 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 head teacher can also provide the report to the pupil's parent, as well as to the pupil, where the head teacher considers there are special circumstances which make it appropriate.



26. The regulations set out the minimum content of the report which can be provided in one or more such reports. Schools can, of course, provide more than the minimum information required.
27. 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.

**Minimum required content of annual pupil reports for pupils in Reception Year to Year 13**

28. 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 Standards and Testing Agency provide further information from Foundation Stage to the end of Key Stage 3, including the new year 1 phonics screening check.

29. Under the terms of [the Data Protection Act](#), some information in pupil reports is exempt from disclosure. 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.

So, for example, this would include information that would disclose the levels in any attainment target or subject of any other child.

**The school leaver's report**

30. The Pupil Information Regulations require head teachers to provide a school leaver's report (in place of the annual pupil report) where a pupil is no longer of compulsory school age and has left the school, or is proposing to do so. The school leaver's report must be provided by no later than 30 September following the pupil's last year at the school.

31. The head teacher'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.

**Transfer of curricular records when a pupil is being considered for a transfer to another school or other institution**

32. The Pupil Information Regulations set out the provision of information when a pupil is being considered for a place at another school (including an independent school) or to a further or higher education institution. The existing school's governing body should transfer the pupil's curricular records, free of charge, within 15 school days of the request being received in writing from the "responsible person" at that institution. The responsible person is the head teacher 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.

**Arrangements for secure transfer of educational records and the Common Transfer File**

33. Pupil Information Regulations also require the transfer of educational records when a pupil ceases to be registered at one school and becomes registered at another (either maintained or independent) in England, Wales, Scotland and Northern Ireland. The governing body of the old school is responsible for securely transferring the pupil's educational record and the common transfer file (CTF) to the new school.
34. The educational record and CTF must be sent to the governing body of the new school or, if the school is independent, to the head teacher. This must be done no later than 15 school days after the day when the pupil ceases to be registered at the old school. The timing is important as their new school has to be aware of, and be in a position to act on, information about previous performance. Where a pupil is registered at a new school but remains registered at the old school, regulations 3A and 3B require the old school must transfer the CTF and educational record within 15 days. For full details of the key information that must be transferred, please see Schedule 2 in the Pupil Information Regulations and the additional CTF information supplied to school administrators in the *Common Transfer File (CTF) Specification and Guidance* available on the DfE website.
35. All such schools are expected to have the capability to securely transfer and receive the defined items of pupil data electronically. This must take place either:
- through the secure file transfer service known as "School to School" or "s2s" on the DfE website <http://www.education.gov.uk/schools/adminandfinance/schooladmin/ims/datatransfers/s2s/a0064650/school-to-school-s2s>; or
  - through an intranet provided for the purpose by or on behalf of a local authority (LA).
36. Although the basic model is that the old school will send the CTF to the new school by one of these methods, it may be possible for LAs to send the CTF and educational records to the new school where there are agreed local and secure arrangements to that effect and if the pupil has registered at the new school.
37. Where schools do not have the capability to transfer files electronically between them, either by means of the secure file transfer service provided by the Department (S2S) 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. They will, however, need to ensure compliance with the Pupil Information Regulations (i.e. that

all the required information is transferred) and the DPA 1998 (i.e. that they are transferred securely and appropriately).

### **Timing of Transfer of CTF and educational records**

38. The regulations require that CTF and education records are 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.
39. As long as the Unique Pupil Number (UPN) 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. A pupil record may already exist in the new school where an LA in England, through the co-ordinated admissions process, has sent an Admissions Transfer File to the maintained secondary schools (including Academies) in its area. This will have a subset of the data in a CTF for the pupils who have been offered and accepted a place in the secondary school.

### **Transferring educational records when a school doesn't know the pupil's new school**

40. Where a pupil changes schools and a request for the transfer of educational records and CTF is not received, although not a legislative requirement, the old school should take reasonable steps to obtain the details of the pupil's new school by attempting to contact the pupil's parents by telephone, letter or email.
41. Where these approaches are unsuccessful and it would involve disproportionate effort to discover the pupil's new school by other means, we suggest that schools should send the information to the special area of the S2S secure file transfer website to update the S2S database of unclaimed pupil records, although this is not a legislative requirement. Schools that do not receive CTFs for their new pupils can search this database through their LA representative.

### **Transferring educational records when he/she moves to a Further Education College**

42. When a pupil transfers to a Further Education college, the college will be better able to assess and plan for the provision for that pupil when they have full information about the pupil's prior needs and attainment. Although there is no legal requirement in the Pupil Information Regulations to transfer pupil information to the FE college, schools are encouraged to use a secure method of transfer to send the pupil's CTF and educational record on receipt of a request from the FE college. The legal powers enabling such a transfer of information are section 537A(6) of the Education Act 1996 and the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009. The school must, however, ensure that all other obligations under the DPA 1998 are complied with when transferring personal information to the FE college. In particular, schools may consider it necessary to seek pupil's consent before transferring the information to ensure that the First Data Protection Principle of the DPA 1998 is met. Schools should seek their own legal advice on this issue.

### **The right of parents to have/see their child's educational record**

43. The Pupil Information Regulations require that a school's governing body must ensure that a pupil's educational record is made available for their parent to see, free of charge, within 15 school days of receipt of the parent's written request. If a parent makes a written request for a copy of the record this too must be provided and within 15 school days. Governing bodies can charge a fee for the copy but if they do, it must not be more than the cost of supply. The Information Commissioner's Office (ICO) has a suggested scale basis for such costs which is available on its website.

### **Material in the pupil's educational record exempt from disclosure to parents**

44. Following a request from a parent to access or receive a copy of their child's educational record, the governing body should refer to the Pupil Information Regulations (5(4)) and not release information which could not lawfully be provided to the pupil himself under the Data Protection Act 1998 (DPA) or in relation to which the pupil himself would have no right to access under that Act or by any order made under sections 30(2) or 38 (1) of the DPA 1998 Act.

### **Access to information about pupils with statements of SEN**

45. Access to information about pupils with statements of SEN is governed by Regulation 24 of The [Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#) and the [SEN Code of Practice](#). 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.

### **Retention of pupil educational records**

46. Schools, as independent public bodies, are directly responsible under the DPA 1998 for the collation, retention, storage and security of all information they produce and hold. This will include educational records, head teacher's reports and any other personal information of individuals - pupils, staff and parents. As such, many schools should consult their legal advisors and develop a data retention policy in accordance with the DPA 1998.

### **DATA PROTECTION ACT 1998**

47. Schools are directly responsible for ensuring that their processing of personal information complies with the terms of the Data Protection Act (DPA). This applies to personal information belonging to pupils held both in educational records as well as located elsewhere and extends to all other personal information held by the school which identifies living individuals (whether they be pupils, staff or parents).
48. Schools should consult their legal advisers as necessary and draw up suitable data protection policies that have regard for the requirements of the DPA and, as data controllers, should register directly with the ICO as failing to do so is a criminal offence.
49. Where a pupil, parent or member of staff considers the DPA has been breached by a school, they may raise a complaint directly with the ICO.

### **Privacy Notices (formally known as Fair Processing Notices)**

50. Under the terms of the DPA, a school is required to provide an oral or written statement, known as a privacy notice, to pupils, parents and staff whenever it plans to collect information which will identify them. The primary aim of this notice is to ensure that any processing of this personal information remains fair by informing the individual(s) about;
- the nature of the personal information that will be/is being collected by the school;
  - why it is being collected;
  - how it is going to be/being collected; and
  - how it will/might be used and who (if anyone), it will/might be shared with

This notice should also set out how an individual can request access to their personal information.

### Right to request personal information

51. Both manual and computerised personal information held by schools is subject to the DPA. This means that a person who submits a written request (i.e. a 'subject access request') to a school to see or receive copies of their personal information, must be allowed to have access to this personal information within 40 calendar days.
52. The DPA does not specify an age at which a child can independently make a request for access to their personal information but those responsible for providing a response to a pupil should take into account whether the pupil wants a parent (or someone with parental responsibility) to be involved.
53. As a general guide, the ICO suggests that a child of 12 or older is expected to be mature enough to understand the request they are making but that, as a child may be sufficiently mature enough at an earlier age (or lack sufficient maturity until a later age), schools should consider requests from pupils on a case-by-case basis.
54. Under a pupil's own data protection rights, parents will only be able to see information about their child if that child is unable to act on his/her own behalf or the child gives their consent for their parent to have access to their personal information.
55. When a school receives a subject access request from a pupil (or parent/person acting on their behalf) made under the DPA requesting access to personal information held in their educational record, the school must not disclose any information which cannot be disclosed under that Act. The maximum fee which can be requested for responding to a subject access request is £10, although a school may not want to charge a fee at all.

### FREEDOM OF INFORMATION ACT 2000

56. 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.
57. The FOIA is overseen by the ICO, 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 ICO and the Ministry of Justice, 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.

58. 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](#).
59. The ICO 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.

60. 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.
61. Any request for information made in writing to a school 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**

62. 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.
63. 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.
64. 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.
65. 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).
66. 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 DfE, available on the [ICO](#) website.
67. 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 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 of a third party;
  - environmental information: EIR 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 Department for Environment,

Food and Rural Affairs [DEFRA](#) website.

68. 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?**

69. School governing bodies are responsible for ensuring a school complies with the FOIA. The legal presumption of openness 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.
70. 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.
71. Since requests for information can be directed to the school through anyone who works there, the governing body should ensure 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 on the [ICO](#) website.
72. 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 DfE recommends that schools respond to straightforward requests for free, and charge where the costs are significant;
  - delegate to the head teacher 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;
  - 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.
73. 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.

74. 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.

#### **WHAT LEGISLATION DOES THIS REFER TO?**

[Childcare Act 2006](#)

[The Local Authority Targets \(Well-Being of Young Children\) Regulations 2007: SI 2007/1415](#)

[The Local Authority Targets \(Well-Being of Young Children\)\(Amendment\) Regulations 2008: SI 2008/1437](#)

[Education \(Provision of Information About Young Children\) \(England\) Regulations 2007: SI 2007/712](#)

[The Equality Act 2010: Schedule 10](#)

[The Education Act 1996: Sections 404 \(sex education\), 408, 537, \(Information about Individual Pupils\), 541\(1\), \(4\)](#)

[Section 576 of the Education Act 1996](#)

[The Education Act 1996 section 537A\(6\): The Education \(Provision of Information About Young Children\) \(England\) Regulations 2007](#)

[The Education \(Individual Pupil Information\) \(Prescribed Persons\) \(England\) Regulations 2009](#)

[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)

The School Information (England) (Amendment) Regulations 2012 (SI 2012/1124)

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

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

The Education (Pupil Information) (England) Regulations 2005 (as amended by The Education (Pupil Information) Regulations 2008)

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

The Education Act 2011: Section 32

## **FURTHER SOURCES OF INFORMATION**

The Schools White Paper, The Importance of Teaching, published November 2010: <http://www.education.gov.uk/schools/toolsandinitiatives/schoolswhitepaper/b0068570/the-importance-of-teaching/>

Guidance on home-school agreements can be found at the [Home-school agreements area](http://www.education.gov.uk/schools/pupilsupport/parents/involvement/hsa) of the DfE:

General information and guidance on data protection is available via the ICO website at: [http://www.ico.gov.uk/Home/for\\_organisations/data\\_protection\\_guide.aspx](http://www.ico.gov.uk/Home/for_organisations/data_protection_guide.aspx) and [http://www.ico.gov.uk/for\\_organisations/sector\\_guides/education.aspx](http://www.ico.gov.uk/for_organisations/sector_guides/education.aspx) ; and through legal guidance which can be ordered free of charge from the ICO at: [https://www.ico.gov.uk/tools\\_and\\_resources/request\\_publications.aspx](https://www.ico.gov.uk/tools_and_resources/request_publications.aspx) .

Information on how to notify as a data controller with the ICO is available on the ICO website at: [http://www.ico.gov.uk/for\\_organisations/data\\_protection/notification.aspx](http://www.ico.gov.uk/for_organisations/data_protection/notification.aspx).

Information on subject access requests made under the Data Protection Act 1998 can be found on the ICO website at: [http://www.ico.gov.uk/for\\_organisations/data\\_protection/the\\_guide/principle\\_6/access\\_to\\_personal\\_data.aspx](http://www.ico.gov.uk/for_organisations/data_protection/the_guide/principle_6/access_to_personal_data.aspx)

Information about privacy notices is available on the ICO website at: [http://www.ico.gov.uk/for\\_organisations/data\\_protection/topic\\_guides/privacy\\_notices.aspx](http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/privacy_notices.aspx)

Suggested text and guidance for the issuing of privacy notices by schools can be found on the DfE website at: <http://www.education.gov.uk/researchandstatistics/stats/a0064374/suggested-text-and-guidance-for-issuing-privacy-notices>

Information and downloads of the Standard and Testing Agency's Assessment and Reporting Arrangement booklets for Early Year's Foundation Stage, Key Stages 1 (including Year 1 phonics screening check), 2, and 3 are available on DfE's website:

<http://www.education.gov.uk/schools/teachingandlearning/assessment/a00197251/assessment-and-reporting-arrangements>

Guidance for school administrators on securely transferring educational records and the CTF is available at: Common File Transfer File Specification and Guidance document

<http://www.education.gov.uk/schools/adminandfinance/schooladmin/ims/datatransfers/ctf>

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.

# Annex 1 GLOSSARY

## A

**Absence and Attendance Codes** – A list of national codes devised by the Department for Education (DfE), which enable schools to record and monitor attendance and absence in a consistent way. They are also used for collecting attendance data through the School Census.

**Academies** – Publicly funded independent schools to which Academy arrangements under section 1 of the [Academies Act 2010](#) relate.

**Performance Tables** – The DfE Performance Tables (published at [www.education.gov.uk/schools/performance](http://www.education.gov.uk/schools/performance)) provide a reliable and easily accessible source of school-level information. The Tables report on the attainment and progress of all pupils at the end of Key Stage 2 and end of Key Stage 4. Additional measures introduced to the 2011 Tables show the relative attainment and progress of pupils from different prior attainment groups, and of Disadvantaged Pupils (i.e. those on Free School Meals/Children Looked After) compared with "others". The Key Stage 5 Tables report A/AS level (and equivalent) achievements at Level 3 for schools and colleges.

The Tables also include information on school workforce, finance and absence and give access, currently in spreadsheet format, to the underlying results at school level for individual GCSEs and other equivalent qualifications.

**Admission authority** – Local Authorities (LAs) are admission authorities with responsibility for admissions to community and voluntary controlled schools. In the case of an Academy, foundation or voluntary aided school the governing body is the admission authority.

**Admission forum**<sup>11</sup> – [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).

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<sup>11</sup> The Education Act 2011 ("the Act") which was granted Royal Assent on 15 November removes the duty on local authorities in England to establish Admission Forums. This provision commences on 1 February 2012.

**Adoption** - This removes the parental responsibility of the child's birth parents and anyone else who has parental responsibility for the child and passes it to the adopter. Some children cease to be looked after because they are adopted. They become adopted when the courts make an adoption order.

**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.

**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.

**Bullying** - Bullying is behaviour by an individual or group, repeated over time, that intentionally hurts another individual or group either physically or emotionally. Bullying can take many forms (for instance, cyber-bullying via text messages or the internet), and is often motivated by prejudice against particular groups, for example on grounds of race, religion, gender, sexual orientation, or because a child is adopted or has caring responsibilities. It might be motivated by actual differences between children, or perceived differences.

## C

**Capability procedures** - procedures governing bodies are required to establish for dealing with a lack of capability on the part of staff at the school. DfE has published a model capability policy for schools.

**Capital grants and expenditure** - The Department provides grants to bodies for capital expenditure. Managing Public Money defines capital spending as spending on the purchase of assets, above a certain threshold, which are expected to be used for a period of at least one year. Capital grants are usually large grants awarded to fund the purchase, construction or refurbishment of a tangible or intangible capital asset or project. Capital grants are used to fund items such as capital assets (land, buildings,

motor vehicles, computers, machinery etc.); stocks bought as investment in fixed assets. The DfE threshold is £2500; items of less value are not counted as capital assets, even if they do have a productive life of more than one year.

**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's Trust** – Children's Trusts are local partnership arrangements to improve outcomes for children and young people, underpinned by the Children Act 2004 (section 10) duty to co-operate, which bring together key agencies, including schools, which deliver services for children, young people and their families.

**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 (CTF)** – Information which must be transferred when a pupil moves from a maintained school to another school (whether or not a maintained school).

**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).

**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

**Dedicated Schools Grant (DSG)** – The ring-fenced specific grant paid by the Department to local authorities in support of the Schools Budget. The money has either to be delegated to schools or used for centrally managed provision for pupils. It can only be spent on other children's services with the approval of the Schools Forum and where an educational benefit can be justified.

**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 Education (DfE), formerly the Department Children, Schools and Families (DCSF)** – The central government department with responsibility for education.

**Designated teacher** – A qualified teacher, head teacher or acting head teacher who is appointed by the school governing body to promote the educational achievement of looked after children on the school's roll.

**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)** – A statutory 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 assessed against the early learning goals at the end of the academic year in which they turn 5. 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.

**Early Years Single Funding Formula (EYSFF)** – The single local funding formula that each local authority is required to develop and implement to fund the free entitlement for 3 and 4 year olds in maintained nursery schools and classes, and private, voluntary and independent early years providers.

**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 head teacher, 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 head teacher, parish priest or vicar, i.e. the position of governor comes with the job.

**Extended Activities in Schools** – Additional services and activities that are offered by schools to pupils, their families and the wider community. These services often take place outside of normal school hours.

## F

**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.

**Free School** – Free Schools are all-ability state-funded schools set up in response to what local people say they want and need in order to improve education for children in their community. Free Schools have the same legal status as Academies.

**Fresh Start School** – A new school which is opened to replace a school causing concern as part of the DfE Fresh Start programme.

## G

**General Teaching Council for England (GTCE)** – GTCE was the professional body for school teachers until it was abolished on 31 March 2012 by the Education Act, 2011. Relevant regulatory functions are now operated by the Teaching Agency on behalf of the Secretary of State.

**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).

## 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 Safeguarding Authority (ISA)** – A non-departmental public body created by the Safeguarding Vulnerable Groups Act 2006. The Independent Safeguarding Authority is responsible for making decisions as to who should be added to the list of those barred from working with children and/or vulnerable adults.

**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 ([ISCS](http://www.iscs.org.uk)).

**Individual Schools Budget (ISB)** – The total of delegated budgets to maintained schools and allocations to private, voluntary and independent early years providers for the free entitlement to three and four year olds

**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)

**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).

**Authority governor** – A person appointed as a governor by the LA.

**List 99** – A list previously maintained by the Department for Education of people barred from working in schools and further education establishments. This has been superseded by the Safeguarding Vulnerable Groups Act 2006.

**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, following the publication of Lord Sutherland's report on the 2008 test delivery difficulties NAA was fully integrated into the QCA. NAA has now been abolished. QCDA has now also been abolished, and its national curriculum tests responsibilities have transferred to the Standards and Testing Agency, which is an executive agency for the DfE.

**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 Standards and Testing Agency (STA) and taken by pupils at the end of Key Stages 1 and 2.

**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 childcare 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.

**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 Education.

**Overall absence** – all recorded absences from school whatever the reason, whether authorised or not.

## P

**Parent** – Any person having parental responsibility for a child or who has care of a child, including an LA. Section 576 of the Education Act 1996 defines 'parent' as all natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility for a child or young person; any person who, although not a natural parent, has care of a child or young person (having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law).

**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 head teacher 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** – Parent support advisors (PSAs) and similar professionals work with families, in and around schools, to help overcome problems they face. PSA roles are defined by school leaders according to their needs and so vary significantly across the country. Some provide a service which focuses on improving parents’ engagement in their child’s learning and development, whereas others take a more targeted approach to support families facing more serious issues. Since April 2011 Government funding for PSAs has been provided within the overall schools budget. This is not ring-fenced as schools are best placed to know how to use their resources to support pupils who need the most help.

**Penalty notice** – Head teachers 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. Head teachers 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.

**Persistent Absence** – Persistent absentee pupils have recorded more than a threshold number of absence sessions for the period: around 15 per cent or more of the available sessions. This typically represents 46 sessions or more annually (HT1-5) or 38 sessions or more over the autumn and spring terms (combined).

**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.

**Phonics** – A method of teaching reading and spelling that trains pupils to associate sounds in the spoken language (phonemes) and their corresponding letters or letter combinations (graphemes).

**Phonics screening check** – A new statutory screening check for pupils at the end of Year 1, introduced from 2012, to assess their ability to decode and read words using phonics.

**Privacy Notice** – An oral or written statement that an organisation should make available to individuals whose personal information it plans to collect or have collected. The Data Protection Act 1998 obliges organisations to inform the individual who is responsible for the collection, the nature of the personal data being collected, why and how it is being collected, how it will or might be used and any further information necessary to enable the collection to be fair. A privacy Notice is an obvious way to satisfy these legal requirements.

**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 previously maintained by the Department for Education of people barred from working with children across the children's workforce. This has been superseded by the Safeguarding Vulnerable Groups Act 2006.

**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 Premium** – Targeted funding (in addition to the Dedicated Schools Grant) paid mainly to schools, specifically aimed at the most deprived pupils to enable them to receive the support they need to reach their potential and to help schools reduce educational inequalities. Premium funding is also provided in respect of children in care who have been continuously looked after for at least six months and children of parents serving in the armed forces. In 2011-12, funding for deprived pupils, distributed to pupils known to be eligible for free school meals, and looked after children was set at £488 per pupil. It was £200 for service children. In 2012-13, levels increased to £600 per deprived and looked after pupil. The level for service children increased to £250.

**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** – The Education (Pupil Information) (England) Regulations 2005 (as amended by the Education (Pupil Information) Regulations 2008) requires head teachers of maintained schools to provide an annual written report on pupils' educational achievements for every registered pupil at their school. The head teacher's report must take in a wide range of curricular information, together with a more general summary of progress. The regulations also require head teachers to provide to all school leavers who have ceased to be of compulsory school age and who are proposing to leave, or who have already left, school

**Pupils on roll** – Pupils registered at a school.

## Q

**Qualifications and Curriculum Authority (QCA)** – Maintained and developed the national curriculum and associated assessments, tests and examinations. From 2009, the QCA became the **Qualifications and Curriculum Development Agency (QCDA)**. From October 2011, statutory assessment and testing are being delivered by the Standards and Testing Agency (STA), a new Executive Agency of the Department for Education. QCDA was abolished on 31 March 2012.

**Qualifications and Curriculum Development Agency (QCDA)** – See **Qualifications and Curriculum Authority**

**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).

**Residence order** – Section 8 of the Children Act 1989 defines a 'residence order' as an order setting out the arrangements to be made as to the person with whom a child is to live.

**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.

**Scheme for Financing Schools** – A document which must be prepared and maintained by each LA under Section 48(1) SSFA, dealing with those matters connected with the financing of schools maintained by the LA which are set out in Schedule 5 to the School Finance (England) Regulations 2012. It sets out the financial relationship between the LA and its maintained schools.

**Schools Budget** – The total planned expenditure by the LA on its Individual Schools Budget, together with allowable central expenditure on provision including special

educational needs and pupil referral units. The Schools Budget is funded mainly by the Dedicated Schools Grant, but LAs can add to this from their own resources.

**Schools Financial Value Standard (SFVS)** – The SFVS is a self-assessment form, to be completed annually, consisting of 23 questions that the governors need to formally discuss with their head teacher and senior staff. The SFVS replaces the Financial Management Standard in Schools (FMSiS). The SFVS assists schools in managing their finances and give assurance that they have secure financial management in place.

**Schools Forum** – A body which must be established by each LA under Section 47A(1) SSFA, which represents the governing bodies and head teachers of schools maintained by the LA, Academies, early years private providers and other interests. Its purpose is to advise the LA on and, in some cases decide matters relating to the schools budget and carry out certain functions. The Schools Forums (England) Regulations 2010 prescribe various matters relating to the establishment and functions of schools forums and require LAs to consult the Schools Forum on certain matters relating to the schools budget. Note that schools members (i.e. representatives from schools and governing bodies) on the Schools Forum are elected by their peers.

**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. Under section 33 of the Education Act 2011, the duty placed upon LAs to appoint SIPs to schools has now been removed.

**School Profile** – The duty placed upon schools to publish a School Profile has been removed with effect from 1 February 2012 with the enactment of section 32 of the Education Act 2011.

**School Teachers' Pay and Conditions Document** – Contains the statutory requirements for teachers' pay and conditions within maintained schools in England and Wales.

**School Teachers' Review Body (STRB)** – An independent body appointed by the prime minister to examine and report on such matters relating to the statutory conditions of employment of school teachers in maintained schools, including teachers' pay.

**Special Educational Needs Co-ordinator (SENCO)** - Teacher designated as having responsibility for co-ordinating provision for pupils with SEN.

**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 receives a monitoring visit after six to eight months and a full re-inspection after a year. It is expected to have improved significantly by then but if it hasn't the school 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 a monitoring visit after six to eight months and a full re-inspection after one year.

**Special educational needs (SEN)** – Learning difficulties for which a child needs special educational help.

**Special Guardianship order** – Section 14A of the Children Act 1989 defines a special guardianship order as an order appointing one or more individuals to be a child's special guardian (or special guardians).

**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.

**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 head teacher and/or people working at the school who are elected as a governor by people who are paid to work at the school.

**Standards and Testing Agency (STA)** – An Executive Agency of the Department for Education, responsible for statutory testing and assessment for pupils up to age 14, from October 2011.

**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 Education, 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.

**Support 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.

**Sure Start Children's Centre** – Located within local communities, Sure Start Children's Centres provide access to integrated services for young children (aged 0-5) and their families. Many children's centres are based on school sites and some may be run by the school governing body on behalf of the local authority.

**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

The **Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997** apply to teachers in LA-maintained schools with, or without, delegated budgets and to lecturers in the further education sector. They include provisions relating to the payment of mandatory and discretionary compensation for premature retirement and payments of compensation in respect of redundancy and the termination of employment.

The **Teachers' Pension Scheme** (England and Wales) is a statutory, contributory, defined benefit scheme. As the main occupational pension scheme for teachers and lecturers, it is the second largest public sector pension scheme in the country. Its operation is governed by the **Teachers' Pensions Regulations 2010** which apply to teachers in schools and other educational establishments in England and Wales maintained by local authorities, to teachers in many independent and voluntary-aided schools, and to teachers and lecturers in establishments of further and higher education. Membership is automatic for part-time and full-time teachers and lecturers, but they are able to opt out of the Scheme if they so wish. The Scheme is administered, on behalf of the Department for Education, by Teachers' Pensions ([www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)).

**Teaching Agency** - A new executive agency of the Department for Education. The Agency is responsible for ensuring the supply of high quality teachers and their training, and for supporting the recruitment and development of early education and childcare workers and Education Psychologists. It also operates the arrangements for teacher regulation. The Agency began operating in April 2012 and took on key functions previously carried out by the Training and Development Agency for Schools (TDA), General Teaching Council for England (GTCE), Children's Workforce Development Council (CWDC) and the Qualifications and Curriculum Development Agency (QCDA).

**Training and Development Agency for Schools (TDA)** – The national agency that was responsible for the funding of teacher training in England and for improving the quality and efficiency of all routes into the teaching profession. It also played a role in the continuing professional development of serving teachers. The TDA was abolished on 31 March 2012 and its core functions moved into the Department for Education as part of a new executive agency, the Teaching Agency.

**Trust School** – A school supported by a charitable organisation (The Trust) which 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”.



Department  
for Education

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