

A GUIDE TO THE LAW FOR SCHOOL GOVERNORS

AMENDMENTS

Amendment Number	Date	Actioned Initials and Date	Weblink
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The name of the Department of Education and Science (DES) changed to the Department for Education (DFE) on 6 July 1992, to the Department for Education and Employment (DfEE) on 4 July 1995 and to the Department for Education and Skills (DfES) in June 2001. However, the previous names are retained in this publication in references to printed material issued before the inception of the DfES, and in other contexts, as necessary.

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FOREWORD

As a governor you make a real difference in helping your school provide the best possible education for each and every one of its pupils. Together with the headteacher and the leadership team you lead your school, setting the vision and establishing the right culture to drive forward improvement to ensure the best life chances are secured for every child.

Governing a school is a demanding job but also an exciting one, especially now with the Government's wider Every Child Matters objectives of ensuring that children stay safe, are healthy, enjoy and achieve, make a positive contribution and achieve economic well being. And of course, these five outcomes for children have become the bedrock of the new Ofsted inspection framework.

You are ideally placed to help deliver these objectives for our children through your strategic role as governor. I would like to thank you for your dedication, hard work and all your time so freely given to governance. I am committed to seeing that you receive the Government's whole-hearted support in the future.

I hope you find this new edition of the guide supports you in carrying out your role. It provides a reference guide to the key parts of education law which you might need to refer to and incorporates the latest legislative changes and guidance on the New Relationship with Schools, extended schools, school self evaluation and the new Ofsted inspection framework.

Together, we can do the very best for the people who matter most – our children and young people.

A handwritten signature in blue ink, appearing to read 'Jacqui Smith', with a stylized flourish at the end.

JACQUI SMITH

Minister of State for Schools and 14-19 Learning

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1 INTRODUCTION

1. This is the eighth edition of *The Guide to the Law for School Governors*. Previously, there were separate versions of this Guide for community (including community special and maintained nursery schools (MNS)), foundation (including foundation special schools), voluntary aided and voluntary controlled schools. These have now been incorporated into this single edition.
2. The main text refers to community schools (including community special and maintained nursery schools) and is mostly generic for all other categories. Where paragraphs refer only to specific categories of school, they are flagged in the margin as (**VC** voluntary controlled), (**F** foundation including foundation special schools) and (**VA** voluntary aided). In certain circumstances, where use of flagging is not straightforward, flags will not be used. The differences will be explained in the text.
3. Throughout the Guide, the term Local Authority (LA) is used instead of Local Education Authority (LEA) to describe the councils listed at Section 12 of the Education Act 1996 which have responsibility for providing education to pupils of school age in their areas (county councils where there is a two-tier system of government, otherwise unitary authorities). Where terms are referred to that are defined in legislation, for example “LEA governor”, the term Local Education Authority (LEA) is still used.
4. All school governors need to know what their legal responsibilities are and how these fit in with the responsibilities of the headteacher, the LA and the Secretary of State for Education and Skills. This Guide explains what the law says and how it affects governors. It should be read alongside the Law and Guidance sections listed at the end of each chapter, and any information on governance provided by the LA.
5. It must be stressed that this Guide cannot replace the law, and it is not possible to offer a full explanation of the law. If specific problems arise, governing bodies may want to ask for advice from their LA, or get their own legal advice.
6. Although governors’ core duties and responsibilities are largely unchanged, the introduction of the New Relationship with Schools and the Department for Education and Skills’ (DfES’s) Five-year Strategy for Children and Learners has brought about changes to governors’ roles and governance in general. This Guide has been revised to incorporate the changes that were current at 1 September 2005.
7. In an effort to answer many of the key questions arising about the role of governors in relation to Children’s Centres, a series of questions and answers has been provided in annex 1. Existing Regulations relating to school governance provide considerable flexibilities, but research in this area is ongoing.
8. As changes are frequently introduced and it is important to ensure governors have current guidance available, it is not possible to produce and distribute paper amendments to this Guide within a reasonable timescale. Consequently, amendments to the Guide will be posted each term on GovernorNet (www.governornet.co.uk). This gives users of this Guide a choice about how they would like to update their knowledge of the law. They can download revised pages and slot these into place; they can download a list of amendments and make manuscript changes to their existing Guide; or they can view the up to date Guide online.
9. At first sight, the range of responsibilities described in the Guide may seem daunting. However, governors do not need to be experts to tackle them. Help and advice is available from various sources. As well as this Guide, the headteacher of the school and officers of the LA can provide professional advice and support. Governors can develop their own knowledge through training schemes and other materials available locally and nationally.

10. Up to date information on all aspects of school governance is available from GovernorNet – a dedicated website for governors. It includes numerous sources of reference, legislation and a discussion board where governors can share information and experiences. GovernorNet can be accessed at www.governornet.co.uk
Free professional advice and assistance is also provided by GovernorLine at www.governorline.info (tel: 08000 722 181). For more information and details of other organisations offering training, support and guidance to governors, see the entry at the end of chapter 5. The clerk to the governing body may also be able to advise governors.
11. At the end of each chapter of the Guide there is a reference section listing where governors' rights and duties are set out in legislation. Acts and Regulations referred to can be ordered from bookshops, accessed on the GovernorNet website at www.governornet.co.uk, The Office for Public Information website at www.opsi.gov.uk, or the Stationery Office's publications website at www.tso.co.uk
12. Copies of all the circulars mentioned in the Guide have been sent to your school. It is also possible to obtain copies of these and other DfES publications from Department for Education and Skills Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham, NG16 0DJ (tel: 0845 602 2260, fax: 0845 603 3360, minicom: 0845 605 5560 or email dfes@prolog.uk.com). Our publications are free unless a price is shown.

N.B. As legislation is often amended and new Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up to date list of legislation applying to schools, please refer to the GovernorNet website www.governornet.co.uk
13. Other useful websites include TeacherNet (www.teachernet.co.uk) and the DfES's website (www.dfes.gov.uk). It is not possible to list every website on which governors can access information. However, many of the DfES's policy teams have websites that are currently being merged with GovernorNet and TeacherNet to form a single all-encompassing new website.
14. When TeacherNet and GovernorNet are merged to this new site, all existing weblinks will be continued, with users being automatically redirected for some time. In the meantime, if more information on DfES policy is required, the various websites can be accessed via the "A to Z" search facility on the DfES's website.
15. Throughout this Guide, all references to "the headteacher" include the acting headteacher at any time when the school does not have a permanent headteacher, or when an acting headteacher has been appointed in the absence of the headteacher.
16. The DfES believes that each member of a governing body needs to have his or her own copy of this Guide. Please contact our Publications Centre (see paragraph 12 above) to order extra copies. The Guide is also available at www.governornet.co.uk
17. At the end of the Guide you will find a brief glossary and a list of all written policy statements governing bodies should have.

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19. **On completion of your term of office as a governor, please return this Guide to the chair of governors or your LA Governor Support Officer.**

2 CONSTITUTION OF GOVERNING BODIES

CHAPTER SUMMARY

The aim of this chapter is to explain the framework for governing body constitution set out in the School Governance (Constitution) (England) Regulations 2003 – the “Constitution Regulations”. Guidance to the Constitution Regulations can be found at www.governornet.co.uk

CONSTITUTION OF GOVERNING BODIES

1. All governing bodies of community, community special, foundation, foundation special, voluntary aided (VA), voluntary controlled (VC) and maintained nursery schools will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006. The size of the governing body ranges from a minimum of nine to a maximum of 20, except VA schools, where the minimum size of the governing body is 10. (N.B. whilst the maximum size of a governing body is 20, the governing body of a primary school can appoint one or two sponsor governors and the governing body of a secondary school can appoint up to four sponsor governors. These do not count towards the maximum size.) Within this range, each governing body can adopt the model of their choice, provided it complies with the guiding principles outlined in paragraph 4.
- VA 2. The only exception is where the governing body of a VA school appoints sponsor governors, when it may appoint the same number of foundation governors to preserve the majority of two. The maximum size of a governing body at a VA 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 secondary school is 28 (20 plus up to four sponsor governors, plus *up to four foundation governors to preserve the majority of two*).

TIMING AND IMPLEMENTATION

3. The Constitution Regulations came into force on 20 March 2003, enabling governing bodies to choose a new constitutional model and formally adopt this by having a new instrument of government in place from 1 September 2003, if they so wished. Governing bodies have until 31 August 2006 to comply with the new framework. From 1 September 2006 all governing bodies must have new style instruments of government in place. The implementation stages and timescales are shown below.

Date	Implementation stage
20 March 2003	Constitution Regulations came into force
1 September 2003	Earliest date governing bodies could have had an instrument of government under the Constitution Regulations
March 2003-August 2006	Governing bodies may choose a new constitutional model
1 September 2006	All governing bodies to comply with the new Regulations on governing body constitution and have a new instrument of government in place

As governing bodies will have until 31 August 2006 to adopt an instrument of government that complies with the Constitution Regulations, the relevant constitution provisions in the 1998 School Standards and Framework Act and 1999 School Government Regulations will exist in parallel with the new framework for constitution until 31 August 2006.

THE GUIDING PRINCIPLES

4. 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 maintained nursery schools. Foundation, VA 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 26.

TRANSITIONAL ARRANGEMENTS

5. All governors elected or appointed on or before 1 September 2003 may serve out their term of office until it ends, or up to 31 August 2006, whichever is the earlier. Individual governors may, of course, resign before their term ends or before 31 August 2006 if they so choose.

PARENT GOVERNORS

6. 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 maintained nursery schools, parents of any of the children for whom any service is provided at the nursery are eligible to stand for election for parent governorship at the school. Parent governors are elected by other parents at the school. If insufficient parents stand for election the governing body can appoint parent governors.
7. For community, community special, VC schools and maintained nursery schools, the Local Authority (LA) has the responsibility for arranging the elections, though it can delegate this to the headteacher.
- VA 8. For foundation, foundation special and VA schools, the governing body has the
F responsibility for arranging the elections, though the governing body can agree with the LA for it to make the arrangements (again, the LA can delegate to the headteacher).
9. Schools must make every reasonable effort to fill parent governor vacancies through elections. Only if insufficient parents stand for election can the governing body appoint:
 - a parent of a registered pupil at the school, or if that is not possible;
 - a parent of a former pupil at the school, or if that is not possible;
 - a parent of a child of or under compulsory school age.

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

- a parent of a registered pupil at the school, or if that is not possible;
 - a parent of a former pupil at the school, or if that is not possible;
 - a parent of a child of or under compulsory school age with special educational needs for which the school is approved, or if that is not possible;
 - a parent with experience of educating a child with special educational needs.
10. 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 (i.e. for more than one-third of the hours of a full-time equivalent) in a school year (at the time of election or appointment).

STAFF GOVERNORS

11. 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.

12. At least one staff governor (in addition to the headteacher – see paragraph 13) 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.
13. The headteacher is a member of the governing body by virtue of their office and counts as a member of the staff category. If the headteacher decides not to be a governor they must inform the clerk of that decision in writing. The headteacher's place remains reserved for them and cannot be taken by anyone else.
14. 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 LEA governors or community governors at their school. If they are paid to work at the school for more than 500 hours in a school year they are not eligible for election or appointment as parent governors. However, staff can vote in parent governor elections if they are parents. They can also be governors at other schools. Their employment status will not affect their qualification for governorships in these categories at another school.

LOCAL EDUCATION AUTHORITY (LEA) GOVERNORS

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

COMMUNITY GOVERNORS

16. Community governors are appointed by the governing body to represent community interests. Community governors can be persons who live or work in the community served by the school, or persons who do not work or live close to the school, but are committed to the good governance and success of the school.
17. In community 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, or if the school is based in a hospital, one or more primary care trusts or the National Health Service (NHS) trust.
18. A person is disqualified from appointment as a community governor if they are a registered pupil at the school, eligible to be a staff governor at the school, or an elected member of the LA to which the school belongs.

FOUNDATION AND PARTNERSHIP GOVERNORS

- VA
VC
F 19. 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 shall specify the bodies concerned and the basis on which appointments are made.
- F 20. If the school has no foundation or equivalent body, the foundation governors are replaced by partnership governors appointed by the governing body after a nominations process. The governing body must ask parents of registered pupils at the school and such others in the community as it considers appropriate (for example staff, community organisations and other local bodies) to provide nominations for partnership governors.

21. Registered pupils at the school, their parents, staff eligible to be staff governors, elected members of the LA and those employed by the LA in connection with education functions are not eligible to be partnership governors.

SPONSOR GOVERNORS

22. 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).
23. The sponsor can be persons who give substantial assistance to the school, financially or in kind, or who provide 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

24. 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.
25. 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.

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

School	Category of governor				
	Parent	Staff	LEA	Community	Foundation/ Partnership
Community, community special, maintained nursery school	At least one-third	At least two, but no more than one-third, including the headteacher	One-fifth	At least one-fifth	
Foundation, foundation special	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter
Voluntary aided	At least one, but enough to make up one-third when counted with foundation governors	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-tenth		They must outnumber the other governors by two and at least one-fifth must be eligible for election/ appointment as parent governors
Voluntary controlled	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter

Proportions and percentages must be rounded up or down to the nearest whole number. Examples of constitutional models can be found in Annex A of the Statutory Guidance on the School Governance (Constitution) (England) Regulations 2003.

TERM OF OFFICE

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

28. The governing body may remove community governors from office. The governing body may also remove any parent governor who has been appointed, but they may not remove an elected parent governor. (A parent governor is considered to be elected if they stood for election for parent governorship. Whether or not a ballot took place is irrelevant for this purpose.) LEA and foundation governors may be removed from office by the person that

appointed them. The person who appointed them must give written notice to the clerk to the governing body and the governor in question of their removal. The governing body may remove from office any sponsor governors and it may also do so at the request of the nominating body. The governing body may not remove any staff governors.

PROCEDURE FOR REMOVAL

29. In the case of the removal of any community governor, appointed parent governor, or sponsor governor whose removal is requested by the governing body, the governor(s) proposing the removal must give the reasons for the proposed 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.
30. In the case of the removal of a community governor nominated by a voluntary organisation, primary care trust or NHS 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 their 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.
- VA
VC
31. 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.
32. A governing body's decision to remove any community, 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.
- VA
VC
F
33. The removal of an ex officio foundation governor must follow the procedure outlined in the above paragraph.

INSTRUMENT OF GOVERNMENT

34. 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, except in relation to maintained nursery schools, where the LA prepares and makes the first instrument of government. 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.
- F
35. 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.
36. 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

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

QUALIFICATIONS AND DISQUALIFICATIONS

38. Schedule 6 of the Constitution Regulations covers the qualifications and disqualifications.
39. A governor must be aged 18 or over at the time of their election or appointment. A person cannot hold more than one governorship at the same school.
40. A person is disqualified from holding or from continuing to hold as a governor or associate member if they:
 - are at any time during their period of office detained under the Mental Health Act 1983;
 - have failed to attend the governing body meetings for a continuous period of six months, beginning with the date of the first meeting they failed to attend, without the consent of the governing body (not applicable to ex officio governors);
 - are bankrupt;
 - are subject to a disqualification order or disqualification undertaking under the Company Directors Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 492(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);
 - have 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 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 from being concerned in the management or control of any body;
 - are included in the list of teachers or workers prohibited or restricted from working with children or young people;
 - are disqualified from working with children;
 - are disqualified from being an independent school proprietor, teacher or employee by the Secretary of State for Education and Skills;
 - have 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;
 - have received a prison sentence of 2.5 years or more in the 20 years before becoming a governor;
 - have at any time received a prison sentence of five years or more;
 - have 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;
 - refuse an application being made to the Criminal Records Bureau for a criminal records certificate.

THE LAW

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

School Standards and Framework Act 1998: Sections [36](#) and [37](#); Schedules [9](#) and [12](#)

[The Education \(School Government\) \(England\) Regulations 1999](#)

[Education \(School Government\) \(England\) \(Amendment\) Regulations 2000: SI 2000/1848](#)

[School Governance \(Constitution, Federations and New Schools\) \(England\) \(Amendment\) Regulations 2005: SI 2005/1730](#)

[School Governance \(Constitution, Procedures and New Schools\) \(England\) \(Amendment\) Regulations 2004: SI 2004/450](#)

2: CONSTITUTION OF GOVERNING BODIES

[School Governance \(Constitution and Procedures\) \(England\) Regulations 2003](#): SI 2003/1916

[Education Act 1996: Section 576](#) (1), (3) and (4) read together with the [School Standards and Framework Act 1998](#): Section 142 (10) gives a definition of “parent” (and see definition of parent in the Constitution Regulations)

[The Education \(Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions\) \(England\) Regulations 2004](#): SI 2004/3264

[School Governance \(Constitution\) \(England\) Regulations 2003](#): SI 2003/348

3 GOVERNING BODY POWERS, DUTIES AND PROCEDURES

CHAPTER SUMMARY

This chapter gives a brief overview of some of the powers and duties a governing body has been given by Parliament. Some duties and powers are dealt with in more detail in later chapters. The chapter also explains the procedures for establishing governing body meetings and 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.
- VA
VC
F 2. The governing bodies of foundation, foundation special, voluntary controlled and voluntary aided schools are corporate bodies with exempt charitable status (but note that under the new Charities Act they will be excepted charities, which means that they will be subject to a degree of regulation by the Charities Commission, but do not have to register provided they are below the financial threshold).
3. As a corporate body, the governing body must have a seal to validate some documents, for example deeds. Legal stationers can give advice on the type needed as well as the cost. 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. Because it is a corporate body, 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. They may wish to use the Decision Planner that is available at www.governornet.co.uk to assist them in deciding where functions can be delegated.
- VA
VC
F 6. The governing bodies of foundation, voluntary aided and voluntary controlled schools automatically have charitable status (see paragraph 2, above). Governing bodies may wish to contact the Charities Commission to find out how charitable status can help them make the most effective use of gifts and other support from the business community, parents and others.

POWERS AND DUTIES OF THE GOVERNING BODY

7. Parliament has given a range of duties and powers to governing bodies under the Education Acts. Later chapters of this Guide explain governing bodies' powers and duties in more detail, but at a school with a delegated budget, the governing body has general responsibility for the conduct of the school with a view to promoting high standards of educational achievement ([Section 21, 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 to enable them to fulfil their statutory responsibility for the conduct of the school. Governors should arrange their visits with the headteacher, who has responsibility for the day-to-day management of the school.
10. It is often useful to draw up a policy on governors' visits to cover things such as giving notice, constructive feedback and handling concerns. The governing body should plan visits to cover a wide range of school work and each visit should have a clear purpose. Visits by governors can be useful and informative. They do not replace professional inspection or the monitoring and evaluation carried out by the headteacher.

DEALING WITH COMPLAINTS

11. [Section 29 of the Education Act 2002](#) requires all governing bodies to have in place a procedure to deal with complaints relating to aspects of the school, and to any community facilities or services that the school provides. The procedure must be publicised.
12. Local Authorities (LAs) are required to set up a procedure for dealing with certain types of complaints, for example complaints about the curriculum or collective worship in a school. The governing bodies' complaints procedure will not replace the arrangements made for those types of complaint. In addition, there are certain complaints that fall outside the remit of the governing bodies' complaints procedure, for example staff grievances or disciplinary procedures, and for these, separate procedures should be in place (see chapter 9 of this Guide on Staffing).
13. In dealing with complaints and in making provision for complaints procedures, the governing body should ensure that the person complaining is given fair treatment and in particular, a chance to state their case either in person or in writing. Decisions and reasons for them should be given in writing and the person complaining should be informed at the same time of any rights of appeal they have if they wish to take the matter further. Timescales should also be set for completing actions so that the process does not take too long. Governing bodies can get advice on dealing with complaints from the LA. A toolkit document containing key messages to help schools to draw up a complaints procedure or modify an existing procedure is also available at www.governornet.co.uk
14. Anyone can complain to the Secretary of State for Education and Skills if he or she believes that a governing body is acting "unreasonably" or is failing to carry out its statutory duties properly ([Sections 496 and 497 Education Act 1996](#)). However, intervention can only occur if the governing body or the LA has failed to carry out a legal duty or has acted "unreasonably" in the performance of a duty. Intervention would have to be expedient in the sense that there would have to be something that the Secretary of State for Education and Skills could instruct either party to do to put matters right.

THE ANNUAL PARENTS' MEETING (APM)

15. Section [103 of The Education Act 2005](#) came into effect on 1 September 2005 revoking the statutory requirement on governing bodies to hold an APM.

Race equality policies

16. The governing body has responsibility for making sure that the school complies with the [Race Relations Act 1976](#) (as amended). The general duty on schools is to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In order to assist schools to do this, the governing body must adopt a race equality policy for the school. This policy sets out how the school intends to attain those aims. In addition, the governing body must assess the impact of its policies on pupils and staff of different racial groups and monitor, by reference to those groups, the admission and progress of pupils and career development of staff, and keep it under review.
17. Governors may find it helpful to ask a senior member of staff to prepare a draft policy for consideration, involving people inside and outside the school. A senior member of staff or a governor should also be responsible overall for ensuring the policy is implemented and monitored. This would include, for example, monitoring reports of racist incidents and the action taken. (See chapter 11 of this Guide on Equal opportunities and schools governors, paragraphs 5–11 for a full description of the general and specific duties of governing bodies under the race relations legislation.)

RELATIONSHIP WITH THE HEADTEACHER

18. In a well-managed school, the headteacher and governing body work in close partnership. The respective roles and responsibilities of governing bodies and headteachers are set out in the [Education \(School Government\) \(Terms of Reference\) Regulations 2000](#): SI 2000/2122.

The governing body must exercise its functions with a view to fulfilling a largely strategic role in the running of the school. It should establish the strategic framework by:

- setting aims and objectives for the school
 - adopting policies for achieving those aims and objectives
 - setting targets for achieving those aims and objectives.
19. The governing body should monitor and evaluate progress towards achievement of those aims and regularly review the framework for the school in the light of that progress. When establishing the strategic framework and reviewing progress the governing body should consider any advice given by the headteacher. The school development plan, post-Ofsted inspection action plan or school improvement plan will generally provide the main mechanism for the strategic planning process.
 20. The headteacher has responsibility for the internal organisation, management and control of the school and for implementation of the strategic framework established by the governing body. Governors are not expected to be involved in the detail of the day-to-day management of the school: that is for the headteacher.
 21. A good headteacher will discuss all the main aspects of school life with the governing body and will expect the governing body to both challenge and support the school to do better. Acting as a “critical friend”, the governing body should offer support and constructive advice, but governors should not be deterred from questioning proposals and seeking further information to enable them to make sound decisions. The headteacher should give the governing body enough information to enable the governing body to feel confident that the headteacher as well as the governing body is fulfilling his or her statutory responsibilities.
 22. A good governing body will delegate enough powers to allow the headteacher to perform his or her management duties as effectively as possible. The headteacher must report to the governing body regularly on how those delegated powers have been exercised and the

governing body should keep the delegation under regular review. The headteacher is also accountable to the governing body as his or her employer for the efficient conduct of those functions he or she has, by virtue of the position of headteacher, as well as those the governing body has specifically delegated to him or her. You will find useful advice in the guidance *Roles of Governing Bodies and Headteachers*. The conditions of employment for headteachers are set out in the *School Teachers' Pay and Conditions Document*, which is updated each year. This document has legal force. Please also see chapter 9 of this Guide on Staffing.

23. To assist the governing body in carrying out its functions, the headteacher has a duty to provide the governing body with such reports in connection with the exercise of his or her functions, as the governing body requires.

RELATIONSHIP WITH THE LA

24. The governing body is responsible for raising standards through its three key roles of setting strategic direction, ensuring accountability and monitoring and evaluating school performance. The LA should support the school's efforts to achieve continuous improvement. The relationship between schools and LAs is based upon intervention in inverse proportion to success, and maximum delegation of funding and responsibility to schools. These principles enable schools to operate largely autonomously. However, the governing body is accountable to the LA for the way the school is run.
25. Where a school is causing concern, or a governing body is acting in a way that is detrimental to the performance of pupils at the school, the LA must inform the governing body and the headteacher of this. The LA should also inform other stakeholders, for example the diocese, foundation body or the Learning and Skills Council (LSC) of its concerns and offer appropriate support to the school. Where necessary, the LA can use its powers to intervene to ensure a school can raise standards. For schools causing concern, guidance is given in the *Schools Causing Concern Guidance, 2005*.

TARGET SETTING

(N.B. Paragraphs 26 to 30 do not apply to maintained nursery schools.)

26. Governing bodies are required to set targets for their pupils' performance in Key Stage 2 and 3 national curriculum tests and in public examinations at 15 to the Local Authority. At some special schools, no children will be expected to meet these levels. Since December 2001, schools that set "zero" targets have been required to set measurable performance targets at the relevant Key Stages using P scales or other performance criteria, where appropriate. The following section gives advice on the duties of governing bodies. More detailed advice can be found in the Department for Education and Skills's (DfES's) *Guidance for Local Authorities on target-setting at Key Stages 2, 3 and 4, and for minority ethnic groups, looked-after children and school attendance* on the DfES Standards Site at <http://www.standards.dfes.gov.uk/ts>

Duty to set targets

27. All schools (apart from middle schools that have pupils entering in Year 6 or Year 9) have a statutory requirement to set targets by 31 December each year for performance five terms later. So, governing bodies need to set targets by 31 December 2006 for performance by pupils in summer 2008. Middle schools are required by statute to set their targets as soon as possible after the beginning of the school year in which the pupils are due to take the relevant key stage tests.

28. Each year, targets must be set for the percentage of pupils that the governing body anticipates will, in the following school year, be registered pupils in the final year of the second or third Key Stages, and will achieve results as follows.

For the second Key Stage	For the third Key Stage
Level 4 or above in national curriculum tests in English	Level 5 or above in national curriculum tests in English
Level 4 or above in national curriculum tests in mathematics	Level 5 or above in national curriculum tests in mathematics
	Level 5 or above in national curriculum tests in science
	Level 5 or above in national curriculum tests in ICT

Each year targets must be set for pupils the governing body anticipates will be registered pupils at the school on the third Thursday in January in the following school year, and who will have attained the age of 15 during the period of 12 months ending on 31 August immediately preceding that day as follows.

- The percentage of the relevant group of pupils aged 15 to achieve, by the end of the following school year, grades A*–C in five or more subjects in GCSE examinations, equivalent approved qualifications, or a combination of both.
 - The average point score for the school to be achieved by that group of pupils by the end of the following school year in GCSE and approved qualifications.
29. For pupils taking examinations, schools should now include those studying for qualifications (including Entry Level, Level 1, Level 2 and AS level qualifications) approved for use pre-16 under Section 96 of the Learning and Skills Act 2000. This will enable the setting of targets that reflect ambitions for pupils taking qualifications other than GCSEs and GNVQs. More details, including the full list of approved qualifications and their equivalency, can be found on the Qualification and Curriculum Authority (QCA) website at www.openquals.org.uk

The governing body cannot change the targets once set.

Changes to legislation

30. The [Education Act 2005](#) removed the requirement for governing bodies to publish Governors' Annual Reports (GARs) with effect from September 2005. The Education (School Performance Targets) (England) Regulations 2004 have been amended to reflect this, the effect being that while schools can choose to publish targets in the School Profile (which has replaced the GAR) there is no legal requirement on them to do so. Governing bodies must, however, report the schools's targets to the Local Authority.

FURTHER EDUCATION (FE) IN SCHOOLS

31. Further education (FE) is defined in [Section 2 of the Education Act 1996](#). Essentially, it is 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.
32. 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.
33. Schools may offer FE courses in the evenings, at weekends, during school holidays or during term time, where 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

Amendment 1
May 2006

Amendment 1
May 2006

maintained schools in classes with school pupils, special conditions apply. These are contained in the [Education \(Further Education in Schools\) Regulations 1999](#): SI 1999/1867. Details can be obtained from the DfES.

34. The LSC has the responsibility for securing the provision of FE facilities generally and for funding post-16 provision. Under [Section 5 of the Learning and Skills Act 2000](#) the LSC may fund private training providers to deliver this provision, and this could be on school premises, by way of contractual arrangements between the training provider and the governing body of the school. Please also see chapter 19 of this Guide on Extended schools.
35. 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.
36. Governing bodies of community special and foundation special schools should consider very carefully the effect offering FE provision would have on their schools. Before offering courses, they must ensure that:
 - if the courses are being offered during the school day, sufficient and suitable accommodation meeting the standards described in *Building Bulletin 77* will still be provided for the pupils on the roll of the school;
 - those attending FE courses and having contact with the school's pupils are not older than the maximum age of pupil the school is approved to take, and that their special educational needs are "compatible" with those of the pupils on the school's roll, as neither party must be disadvantaged;
 - those attending courses during the school day who are older than the maximum age the school is approved to take will be provided for in accommodation separate from that of the school's pupils;
 - by offering courses to adults, the pupils' health, safety and welfare are not compromised;
 - the overall "complexion" of the school will not be changed;
 - where the school's staff will be used to deliver a course, pupil to teacher ratios and the support staff working with pupils remain at an appropriate level.

INSURANCE COVER

37. The governing body as a whole should take out insurance to cover its potential liability for negligence in carrying out its responsibilities. Cover must now be regarded as essential. Although legal action against teachers and schools for breaches of professional duty is still quite rare, claims (for example for "failure to educate") are becoming more frequent. The LA will either pay from central funds for such insurance or it may include funding for this in the school's delegated budget. In the former case, the governing body can request delegated funding if it wishes to arrange its own insurance. If governing bodies make their 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.
38. The governing body may also wish to consider obtaining insurance protecting individual governors and non-governor members of its committees against personal liability arising from their office. However, personal claims against school governors are very rare indeed. This type of insurance cover is unlikely to represent good value for money because governors acting honestly, reasonably and within their powers will not incur personal liability (see paragraph 4, above). However, it should be recognised that it may be difficult to persuade good people to serve in this capacity unless they are made completely secure against personal liability.

39. Governors are not disqualified by the normal rules on pecuniary interests from participating in meetings about obtaining personal indemnity insurance. They can consider and vote on proposals for the governing body to take out insurance protecting members against liabilities incurred by them arising out of their office.

WORKING TOGETHER: GIVING CHILDREN AND YOUNG PEOPLE A SAY

40. The [Education Act 2002](#) places a duty on LAs and governing bodies of maintained schools, in the exercise of their functions, to have regard to any guidance from the Secretary of State for Education and Skills on the consultation with pupils in taking decisions affecting them. This guidance complements a range of other initiatives aimed at greater involvement of young people and developing their skills of active participation. The guidance was sent to all schools and Local Education Authorities (LEAs) in April 2004 and is available at www.dfes.gov.uk/participationguidance

POWER TO INNOVATE

41. Any governing body that is prevented by any education legislation from implementing an innovative idea for raising standards can apply to the Secretary of State for Education and Skills (until September 2006), following consultation with relevant bodies to vary legislation for a pilot period. Pilots may last for up to three years, with the possibility of extension for up to a further three years.

GOVERNING BODY PROCEDURES

42. The [School Governance \(Procedures\) \(England\) Regulations 2003](#) (The Procedures Regulations) came into force on 1 September 2003. These Regulations cover the procedures governing bodies are required to follow.

Election of the chair and vice-chair

43. The governing body must elect a chair and a vice-chair. There are no Regulations prescribing the election process as it is believed that governing bodies are best placed to decide how to organise this, but those standing for election should withdraw from the meeting when a vote is taken. Governors who are paid to work at the school, for instance the headteacher and staff governors, and pupils at the school, 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.

Term of office of the chair and vice-chair

44. The governing body decides on the chair and vice-chair's term 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 their term of office as a governor is shorter than the term of office determined for the office of the vice-chair or chair, then the vice-chair or chair's term of office ends when the governor's term of office ends.
45. 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

46. 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, 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

47. 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 and Skills under section 18 of the [School Standards and Framework Act 1998](#)
48. A motion to remove the chair or vice-chair must be an agenda item for a governing body meeting and the agenda must be circulated to governing body members at least seven days in advance of the meeting.
49. 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

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

Appointment of the clerk to the governing body

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

Functions of the clerk

53. 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 can be found in the training and recruitment section of www.governor.net.co.uk

Removal of the clerk

54. The governing body can remove their 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

55. Governors, associate members, the headteacher and the clerk have the right to attend governing body meetings. In addition, the governing body can allow any other person to attend their 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

56. The governing body is best placed to decide how often and for how long they need to meet in order to perform their 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.
57. 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.
58. The clerk must give each governor, associate member and the headteacher (if not a governor) written notice of a meeting, a copy of the agenda and any papers to be considered at the meeting at least seven days before the meeting. If the chair considers that there are matters that demand urgent consideration, he or she can determine a shorter period of notice, but the period of notice must be at least seven days if matters include the removal of the chair, the suspension of any governor, or a proposal to close the school is to be considered.

QUORUM FOR GOVERNING BODY MEETINGS

59. 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

60. 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.
61. 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

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

the Freedom of Information Act (see Guidance for Schools on FOI, available on www.governor.net.co.uk).

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

64. 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 in question 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

65. 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 with the religious character and has brought or is likely to bring the school or 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 or to the staff or to the pupils.

66. 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.

67. Any motion to suspend must be specified as an agenda item of a meeting for which at least seven days' notice must be given. Before the governing body votes to suspend a governor, the governor proposing the suspension must give the reasons for doing so. The governor who is proposed for suspension must be given the opportunity to make a statement in response before withdrawing from the meeting and a vote is taken.

68. 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 their suspension.

69. 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

70. A governing body can delegate any of its statutory functions to a committee, a governor or to the headteacher, subject to prescribed restrictions. The governing body must review the delegation of functions annually. Each governing body will remain accountable for any decisions taken including those relating to functions delegated to a committee or individual.
71. 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.
72. The governing body cannot delegate any functions relating to:
- the constitution of the governing body (unless otherwise provided by the Constitution Regulations);
 - the appointment or removal of the chair and vice-chair;
 - the appointment of the clerk;
 - the suspension of governors;
 - the delegation of functions;
 - the establishment of committees.
73. 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

74. 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 are covered in chapter 9 of this Guide on Staffing.

Establishment of committees

75. 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

76. 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.
77. The headteacher of the school cannot be appointed as clerk to a committee. The governing body can appoint a governor to clerk one or more committees.
78. If the clerk does not attend a committee meeting, the governors present at the meeting can appoint a member of the committee (but not the headteacher) to act as clerk for that meeting.
79. The governing body can remove a clerk to a committee from office at any time.

Functions of the clerk

80. 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 can be found in the training and recruitment section of Governornet at www.governornet.co.uk

Right of persons to attend meetings of committees

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

Meetings of committees

82. 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

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

Quorum

84. 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

85. 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 they are 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

86. 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.
87. 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

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

THE LAW

N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up to date list of legislation applying to schools, please refer to the GovernorNet website

www.governornet.co.uk

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 [School Governance \(Constitution\) \(England\) Regulations 2003](#): SI 2003/348 (as amended)

[The Education \(School Performance Targets\) \(England\) Regulations 1998](#): SI 1998/1532 (as amended by The Education (School Performance Targets) (England) (Amendment) Regulations 2005: SI 2005/2449)

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

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

[The School Governance \(Procedures\) \(England\) Regulations 2003](#): SI 2003/1377 (as amended by SI 2003/1916)

[The Race Relations Act 1976](#) (as amended by the Race Relations (Amendment) Act, 2000)

The specific duties of governing bodies are set out by way of Statutory Instrument SI 2001/3458 and SI 2004/3125

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

[Education Act 2005 Section 103](#)

GUIDANCE

www.standards.dfes.gov.uk/lea/role/

DfEE Circular 11/98 – Target-setting in schools www.standards.dfes.gov.uk/ts/

Supporting the Target Setting Process – Guidance for effective target setting for pupils with special educational needs (DfEE 0065/2001)

Guidance for Local Authorities on target setting at Key Stage 2, 3 and 4, and for minority ethnic groups, looked after children and school attendance. www.standards.dfes.gov.uk/ts

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

FEFC Circular 96/06 – Franchising

FEFC Circular 99/37

FEFC Circular 99/37 Supplement

Roles of Governing Bodies and Headteachers: DfEE Guidance, issued September 2000

School Complaints Procedure – www.governor.net.co.uk – located in Roles and Responsibilities

Innovation Unit website – www.standards.dfes.gov.uk/innovation-unit

Extended Schools: providing opportunities and services for all – www.teachernet.gov.uk/extendedschools

On promoting race equality:

Promoting Race Equality: the Statutory Code of Practice by The Commission for Racial Equality (2002) ISBN: 1 85442 430 0

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

Learning for All: Standards for Racial Equality in Schools, The Commission for Racial Equality (2000) ISBN: 1 85442 223 5

Schools' Race Equality Policies: From Issues to Outcomes, DfES guidance (2005), from www.standards.dfes.gov.uk

Schools Causing Concerns 2005 - www.standards.dfes.gov.uk/sie/si/SCC/

Working Together: Giving children and young people a say (DfES 0134/2004)

4 THE NEW RELATIONSHIP WITH SCHOOLS

CHAPTER SUMMARY

This chapter explains what the New Relationship means for governors, specifically in relation to school self-evaluation and School Improvement Partners. Reference is also made in this chapter to the School Profile and school inspection. For more detailed information, please see chapters 13 and 14 respectively.

OVERVIEW

1. The New Relationship with Schools is designed to give every school more autonomy to plan its own future improvement. The aim is to help schools raise standards with clearer priorities, reduced bureaucracy, a bigger role for school leaders in system-wide reform and better information for parents. As a result of these changes, schools will find it easier to engage the support they require without duplicative bidding, planning and reporting requirements. The school's governing body, working with its senior leadership team, should find it easier to set the strategy for the school.
2. The New Relationship will:
 - build the capacity of schools to improve, with rigorous self-evaluation, stronger collaboration and effective planning for improvement;
 - enable talented school leaders to play a wider part in system-wide reform;
 - operate an intelligent accountability framework that is rigorous and has a lighter touch, giving schools, parents and pupils the information they need;
 - reduce unnecessary bureaucracy, making it easier for schools to engage the support they require without duplicative bidding, planning and reporting requirements (see chapter 13 of this Guide on Providing information);
 - improve data systems to put the most useful data on pupils' progress into the hands of schools and those who work with them;
 - secure better alignment between schools' priorities and those of local and central government.
3. The statutory responsibilities of the governing body for the school's strategy, targets, budget and key policies are not altered. The ability of the governing body to exercise these responsibilities will be reinforced, not diminished, because:
 - it will be able to plan ahead more effectively and with greater certainty and predictability in its future funding through the introduction of multi-year school budgets;
 - it will have clearer pictures of its school's performance, with self-evaluation processes that are the starting point for each school's inspection and relations with its maintaining authority;
 - it will be able to report publicly through a Profile (see chapter 13 of this Guide on Providing information, paragraphs 24–30) that provides a broader and fuller picture of the school, with standardised performance data automatically derived from central databases (this replaces the annual report to parents and removes the requirement to hold an annual meeting with parents);
 - it will have reports from a nationally accredited, locally managed School Improvement Partner on the school's performance and future priorities;
 - it will have the School Improvement Partner's advice on the headteacher's performance for appraisal purposes;
 - shorter, sharper inspections will give it more frequent reports on the school's effectiveness, with less disturbance to the work of the school;

- the data that inspectors, School Improvement Partners and schools themselves use to assess the progress of pupils will be aligned and will have more depth and focus.

4. The main changes brought in by the New Relationship are shown in the table.

SCHOOL SELF-EVALUATION

- Rigorous school self-evaluation is the starting point for planning, inspection and relations with the maintaining authority, including the dialogue with the School Improvement Partner. The senior management team should take the lead in carrying out self-evaluation, involving the governing body throughout the process. The final judgements, which can be recorded on the Ofsted self-evaluation form, 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 self-evaluation form. The school plan should be monitored, evaluated, reviewed and adjusted as appropriate as part of the ongoing cycle of self-evaluation.
- The process of self-evaluation should be designed by each school for its own circumstances. High-level guidance for schools called *A New Relationship with Schools – Improving Performance through School Self-Evaluation* can be found at www.teachernet.gov.uk It has been issued jointly by the Department for Education and Skills (DfES) and Ofsted focusing on how schools can get the best out of self-evaluation and use the findings effectively for school improvement. The publication includes annotated extracts from self-evaluation forms already completed by pilot schools in the trials.

Key features	Before	After
Inspection – also see chapter 14 of this Guide (Inspection)	6–10 weeks' notice before an inspection Maximum six-year interval between inspections Relatively large inspection teams visiting for a week	2–5 days' notice Maximum three-year interval Small team visiting for no more than two days – around one-quarter of previous inspection weight
Public accountability	Governors' annual report Annual parents' meeting	Profile – see chapter 13 of this Guide (Providing information)
External support	Link advisers	Nationally accredited School Improvement Partners working to Local Authorities (LAs)
School self-evaluation and planning	Most schools undertake some form of evaluation, but not all, and this is not linked to planning and inspection Multiple accountabilities and support programmes	Self-evaluation as the starting point for inspection, planning and external relations Accountability through the School Improvement Partner
Data	Multiple surveys Data on school performance that is not aligned across inspection, monitoring or planning	School Census – data is collected once and used many times Data is aligned
Communications	Monthly batch of paper to all schools	Online ordering

- Governors will continue to play an important part in the new Ofsted inspection process – see chapter 14 of this Guide (Inspection) – and will continue to have a duty to notify parents of the outcome of the inspection by ensuring that the full report is sent to parents.

SCHOOL IMPROVEMENT PARTNERS

8. As part of the New Relationship, high quality, nationally accredited School Improvement Partners will be appointed for all primary and secondary schools. Many of these will be headteachers or will have recent headship experience. Their role will be to challenge and support headteachers in their assessment of how well the school is performing and their planning for the future.
9. The governing body will receive a report direct from the School Improvement Partner on the annual dialogue between him or her and the school about the performance of the school, based on its self-evaluation, plans and targets. The governing body retains its responsibility for setting statutory targets and for deciding at what levels to set them.
10. Every governing body will be advised by the school's Improvement Partner on its management of the headteacher's performance and appraisal. This advice will cover the ground previously covered by the External Adviser with a specific remit for headteacher performance. It is intended to rescind the Regulations that currently require governors to take external advice on headteachers' performance management so that this requirement no longer applies. School Improvement Partners will be allocated to schools by Local Authorities (LAs), but schools will be able to ask for an alternative School Improvement Partner where they have good reasons for doing so. The funds for the External Adviser functions will be incorporated in school budgets from April 2006.

Special schools

11. The DfES is conducting a trial with five LAs during 2005–6 to clarify the role and value of the School Improvement Partner function for special schools. This will cover around 20 maintained special schools, including all-age schools, but with an emphasis on those with secondary age pupils, plus two non-maintained special schools. The trial will involve 8–10 School Improvement Partners with a mix of backgrounds, including special school headteachers, mainstream headteachers and LA special needs specialists.

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

GUIDANCE

Further information is available at: www.teachernet.gov.uk/management/newrelationship

5 SUPPORT AND TRAINING FOR GOVERNORS

CHAPTER SUMMARY

This chapter gives details of the 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 the payment of allowances for expenses is also provided.

TRAINING

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

THE NATIONAL STRATEGY FOR GOVERNOR SUPPORT AND TRAINING

5. The National Strategy consists of three strands.

i) The National Training Programme for New Governors

This training programme for new governors aims to ensure that new governors 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 and it can also be completed by distance learning.

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 model national job description and person specification. It also enables experienced clerks to refresh, consolidate and further develop their competences.

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

The Department for Education and Skills (DfES) launched The National Development Programme for Chairs of Governing Bodies and Headteachers to meet the demand for more support for chairs of governing bodies and to encourage them to work together proactively with headteachers, whilst respecting the individual roles and responsibilities of each other. It comprises two separate programmes.

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

Copies of materials from the National Strategy strands can be obtained from governor.materials@dfes.gsi.gov.uk or by telephoning the School Governance Team on 01325 391183.

TIME OFF FROM WORK

6. Under employment law, 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 needed to carry out a governor's duties;
 - if the employee is also being given time off from work for other activities;
 - the particular circumstances of the employer's business;
 - the likely effect that the employee's absence may have on it.

PAYMENT FOR TIME OFF

7. Employers may give time off with pay but do not have to do so. This is for discussion between the employee and the employer.

SETTLING DISAGREEMENTS

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

ALLOWANCES FOR EXPENSES

9. Governing bodies that have a delegated budget can choose whether or not to pay allowances to governors and associate members of the governing body. The DfES 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 dependant relative (including childcare or baby sitting);
 - telephone charges, photocopying and stationery;
 - travel and subsistence (i.e. reimbursement for meals purchased that would not have otherwise been bought).
10. The list in paragraph 9 is not an exhaustive list of possible allowances. Payments can only be paid in respect of expenditure necessarily incurred for the purposes of enabling the person to perform any duty as a governor. This would not include payments to cover loss of earnings for attending meetings.
11. Travel expenses must be paid at a rate not exceeding the maximum level of the Inland Revenue Authorised Mileage Rate. The Inland Revenue rates are changed annually and can be found on the Inland Revenue website at www.inlandrevenue.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 the Inland Revenue for advice. Other expenses should be paid on the provision of a receipt (at a rate predetermined by the governing body and set out in its scheme) and should be limited to the amount shown on the receipt.
12. Governing bodies should make provision from within their delegated budget if they anticipate expenditure in making adjustments for disabled governors, or in providing support to those governors whose first language is not English.
13. Where a governing body does not have a delegated budget, the allowances referred to in paragraph 9 may be paid by the LA at a rate determined by them.

FURTHER INFORMATION

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

Catholic Education Service
 39 Eccleston Square
 London SW1V 1BX
 Tel: 020 7901 4880
 Email: general@cesew.org.uk

Website: www.cesew.org.uk

Church of England Board of Education
Church House
Great Smith Street
London SW1P 3NZ
Tel: 020 7898 1500
Website: www.cofe.anglican.org

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

National Governors' Association (Merger of
National Association of School Governors
and National Governors' Council)
2nd Floor SBQ 1
29 Smallbrook Queensway
Birmingham B5 4HG
Tel: 0121 643 5787
Email: governorhq@nasg.org.uk
Website: www.nasg.org.uk

National Governors' Council (NGC)
Lonsdale House
52 Bulcher Street
Birmingham B1 1QU
Tel 0121 616 5104
Email: ngc@ngc.org.uk
Website: www.ngc.org.uk

GovernorLine runs a free professional 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 9.00a.m. to 10.00p.m. (excluding public holidays) and 11.00a.m. to 4.00p.m. on weekends. Call 08000 722 181 or email via their website at www.governorline.info

USEFUL ADDRESSES FOR FURTHER INFORMATION

DfES School Governance Unit
Mowden Hall
Staindrop Road
Darlington DL3 9BG
Tel: 01325 391183

DfES Publications Centre
Tel: 0845 602 2260
Ofsted
Tel: 020 7421 6800
Website: www.ofsted.gov.uk

DfES School Governors' website,
GovernorNet
Website: www.governornet.co.uk

Your Local Authority or Diocesan
Governor Support Services

Office for Public Sector Information
(OPSI), incorporating Her Majesty's
Stationery Office (HMSO)
Website: www.opsi.gov.uk

THE LAW

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

[Education Act 1996: Section 519](#) (travel and subsistence at schools without a delegated budget)

Education Act 2002: Sections [19\(3\)](#) and [22](#)

[Education \(Governors' Allowances\) Regulations 2003](#)

GUIDANCE

Department for Trade and Industry (DTI) booklet PL702 (Rev 4): Time Off for Public Duties, available from the DTI website at www.dti.gov.uk/er

6 THE CURRICULUM

CHAPTER SUMMARY

This chapter explains what the national curriculum is and details the roles and responsibilities of the headteacher and governing body. Also included is guidance on where the national curriculum may not apply and procedures for handling complaints about the curriculum.

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

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

2. The National Curriculum secures for all pupils, irrespective of social background, culture, race, gender, differences in ability and disabilities, a right to a number of areas of learning, and to develop knowledge, understanding, skills and attitudes necessary for their self-fulfilment and development as active and responsible citizens. It also makes expectations for learning and attainment explicit to pupils, parents, teachers, governors, employers and the public, and establishes national standards for the performance of all pupils in the subjects it includes.
3. In addition, the revised national curriculum has an overarching statutory inclusion statement. This outlines how teachers can modify, as necessary, the national curriculum programmes of study to provide all pupils with relevant and appropriately challenging work at each Key Stage. It requires teachers to have due regard to the three principles that are essential to developing a more inclusive curriculum. These are: setting suitable learning challenges; responding to pupils' diverse learning needs; and overcoming potential barriers to learning and assessment for individuals and groups of pupils. The national curriculum handbooks give further details and examples of how these principles may be achieved in practice.
4. Responsibility for the curriculum is shared between the headteacher, the governing body, Local Authorities (LAs) and the Secretary of State for Education and Skills.
5. The current version of the national curriculum took effect from August 2000. From September 2004, the study of design and technology and a modern foreign language was no longer compulsory at Key Stage 4. A new

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category of entitlement areas has been introduced that comprises the arts, design and technology, the humanities and modern foreign languages. There are no statutory programmes of study for the entitlement subjects.

6. Citizenship education became a statutory part of the national curriculum in Key Stages 3 and 4 in 2002. The non-statutory framework for personal, social and health education (PSHE) and citizenship at Key Stages 1 & 2, and the framework for personal, social and health education at Key Stages 3 & 4 was introduced into schools in 2000. Citizenship aims to provide students with the knowledge, skills and understanding they need to become informed citizens, aware of their rights, responsibilities and duties. An introductory leaflet and video *Making a success of citizenship education* provide school governors with an overview of developments in relation to the introduction of citizenship education in schools available from www.dfes.gov.uk/citizenship
7. The [Education Act 2002](#) extended the national curriculum to include the Foundation Stage for the first time. The same responsibilities rest with the headteacher, the governing body, LAs and the Secretary of State for Education and Skills as with later Key Stages.

THE NATIONAL FRAMEWORK

8. The basic features of the school curriculum were first laid down in the [Education Reform Act 1988](#). [Part 6 of the Education Act 2002](#) gives the legal framework for the current curriculum. Apart from the national curriculum, maintained schools must offer religious education, sex education and careers education for specified year groups.
9. The Foundation Stage is delivered in a range of settings. These include children in maintained nursery schools (MNS); nursery and reception classes in primary schools; early years centres and accredited childminders in networks approved to deliver early education and private nurseries. It is organised into six areas of learning:
 - personal, social and emotional development;
 - communication, language and literacy;
 - mathematical development;
 - knowledge and understanding of the world;
 - physical development;
 - creative development.
10. The National Curriculum is divided into 5 stages – the Foundation Stage from 3-5 and 4 key stages. The age ranges that each of the four key stages cover are set out in the table below.

	Foundation Stage	Key Stage 1	Key Stage 2	Key Stage 3	Key Stage 4
Age	3-5	5-7	7-11	11-14	14-16
Year groups	Nursery/Reception	1-2	3-6	7-9	10-11

11. In respect of Key Stage 4, a new category of entitlement curriculum areas which comprise the arts, design and technology, the humanities and modern foreign languages was introduced in September 2004. This means that schools must make these areas of the curriculum available to all students who wish to study courses in them.

The table below shows the statutory and non-statutory subjects for each Key Stage.

Key:

• = statutory

* = non-statutory

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 and health education (PSHE)	*	*	*	*

12. From the 2004–5 academic year, the Key Stage 4 statutory requirements are:

- a small group of compulsory subjects comprising English, mathematics, science, Information and communication technology (ICT), citizenship, physical education (PE) and RE;
- compulsory areas of learning comprising careers education, sex education and work-related learning;
- entitlement areas comprising the arts, design and technology, the humanities, and modern foreign languages.

The major changes are:

- the creation of entitlement areas that schools must provide if students wish to take courses in them;
- work-related learning as a new requirement for all;
- from 2006, a smaller, updated programme of study for science;
- physical education with a greater focus on physical fitness, health and well-being.

Guidance and information on the new arrangements at Key Stage 4 can be found on the Qualifications and Curriculum Authority's (QCA's) 14–19 website at www.qca.org.uk/14-19

13. For all Key Stages, two hours of high quality PE and school sport a week is recommended for all pupils. This includes the national curriculum requirement for PE and extra-curricular activities. Competitive games activities are compulsory throughout Key Stages 1 to 3.

14. In science, there are two programmes of study: single science and double science. The requirements of either option would also be met by pupils taking General Certificate of Secondary Education (GCSE) courses in all three sciences. It is strongly recommended that the great majority of pupils should take double science or the three separate sciences. From September 2006 at Key Stage 4, a revised and updated science programme of study will be introduced which will set out a small core relevant to all students. This will lead into a range of science qualifications, including a new single award GCSE.
15. Schools have some discretion over when to start 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.
16. The national curriculum also sets out where learning should take place across the curriculum. The four areas for learning, which are described in more detail in the national curriculum handbooks are:
 - promoting spiritual, moral, social and cultural development across the national curriculum;
 - promoting personal, social and health education;
 - promoting skills across the national curriculum;
 - promoting other aspects of the school curriculum.
17. Curriculum guidance for the Foundation Stage is the core reference document for staff in nursery and reception classes. All early years settings in receipt of government funding are required to have regard to it in planning and providing learning activities that will help children achieve the early learning goals. These set out the skills, knowledge, understanding and attitudes that most children are expected to achieve in each area of learning by the end of the Foundation Stage.
18. Unlike later Key Stages there are no programmes of study. The guidance sets out principles that need to underpin provision. These include:
 - the need for each child to feel secure, valued and included;
 - recognition of the importance of close partnerships with parents, respecting their role as children's first and enduring educators;
 - planning an interesting and exciting learning environment, indoors and outdoors.
19. The guidance also recognises the distinct needs of children at this stage of their development by giving guidance on effective learning and teaching. The Foundation Stage is a broad, balanced and purposeful curriculum delivered through planned play activities to help ensure all children have the opportunity to reach their full potential. It emphasises the need for a balance between adult planned activities and opportunities for children to initiate their own learning. It guides on the range of strategies staff can use to help children make progress towards the early learning goals, including the importance of observing children and using this information to plan the next steps in their learning.

20. From Key Stage 1 onwards for each subject and Key Stage, there are programmes of study which set out what pupils should be taught. Attainment Targets (ATs) set out the standards pupils are expected to reach. At the end of Key Stages 1–3, in all subjects (except citizenship education), standards of pupil performance are set in levels ranging from 1 to 8. The majority of pupils climb up the levels as they get older and learn more. There is an extra description above level 8 for pupils who show “exceptional performance”. Sixteen-year-olds are assessed on the A to G grading scale for GCSE. Pupils with outstanding achievements are awarded a starred A (A*).
21. Citizenship has no eight-level scale. Citizenship has an end of Key Stage description. For all pupils completing Year 9, teachers are required to make a judgement about performance against the end of Key Stage description. QCA suggests using the categories “working towards”, “working at” and “working beyond” to describe attainment. Schools should keep a record of this for each pupil.
22. All teachers check their pupils’ progress in each subject as a normal part of their teaching. They must also formally assess pupils’ progress in English, mathematics and science against the national curriculum standards. This should happen at the end of Key Stages 1–3 when pupils are usually aged 7, 11 and 14. The teacher decides which level best describes a pupil’s performance in each area of learning in the subject. At Key Stage 2 and 3 the teacher uses the levels in the attainment targets to work out an overall level in each subject. This process is known as teacher assessment. At Key Stage 1, reading, writing and mathematics must take into account the outcome of any national curriculum tasks and tests used to form an overall teacher assessment level.
23. By law, pupils should also be assessed at five key points in their compulsory education to find out what they have learned and understood. For most pupils these key points will be when they have completed the programme of study for each key stage, usually the ages of 5, 7, 11, 14 and 16. This process is known as statutory assessment.
24. Schools must report pupils’ teacher assessment results at the end of the Foundation Stage and Key Stage 1 and national curriculum test results and teacher assessment results at Key Stages 2 and 3 to their parents, and publish whole school results from Key Stages 1 to 3. This may be included with information given in the School Profile. The Department for Education and Skills (DfES) also publishes national analyses of the results (see chapter 13 of this Guide on Providing information).
25. The national assessment arrangements for each key stage are as follows.
- The Foundation Stage Profile summarises each child’s achievement in the six areas of learning at the end of the Foundation Stage. There are no tests and tasks. Staff draw on their day-to-day observations of children to build up information throughout the final year of the Foundation Stage. 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.
 - For Key Stage 1, national curriculum tasks and/or tests in reading, writing and mathematics and teacher assessment in speaking and listening, reading and writing, mathematics and science take place.
 - For Key Stage 2, teacher assessment in English, mathematics and science, as well as national curriculum tests take place in these subjects (this does not include pupils working at the lowest levels).
 - For Key Stage 3, teacher assessment in all national curriculum subjects take place for all pupils as well as national curriculum tests in English, mathematics and science (this does not include pupils working at the lowest levels).
 - At the end of Key Stage 4, at age 16, the GCSE is the main way of assessing pupils.

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You can find more information about the assessment arrangements in the Foundation Stage and Key Stage 1, 2 or 3 *Assessment and Reporting Arrangements booklets* (published by the Qualifications and Curriculum Authority (QCA)) sent to all schools every autumn.

26. The governing body shares responsibility with the headteacher and the LA for making sure that the national curriculum is taught as well as for carrying out assessments. This responsibility includes making sure that enough lesson time is provided for pupils to cover the national curriculum and other statutory requirements. Chapter 12 of this Guide (Discipline and attendance) gives the current recommended minimum weekly lesson times. The governing body must also make sure that only approved external qualifications and syllabuses are offered to pupils of compulsory school age. This includes off-site provision. Details of approved qualifications can be found on the DfES website.
27. Governing bodies are also responsible for ensuring that the headteacher sends the Foundation Stage Profile results and Key Stage 1 teacher assessments results to the LA. The LA collects together the results and sends them on to the DfES (see chapter 13 of this Guide on Providing information).

POLITICAL BIAS

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

CURRICULUM POLICY

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

SEX EDUCATION

30. Governing bodies of maintained schools providing primary education must decide whether sex education 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.
31. All maintained schools providing secondary education must provide sex education (including education about HIV and AIDS and other sexually transmitted diseases). All maintained schools should teach human growth and reproduction as set out in the statutory national curriculum for science.
32. 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 headteacher must also make sure that any sex education is embedded in PSHE to ensure that pupils

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consider the moral aspects of sex education and are encouraged to develop loving and caring relationships.

33. 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 national curriculum science).
34. The DfES issued guidance on SRE to all maintained schools in July 2000. The guidance is underpinned by the [Learning and Skills Act 2000](#), which gives headteachers and governors a statutory responsibility to have regard to the guidance when developing their SRE policies and that pupils are protected from inappropriate teaching materials. Copies of the guidance can be downloaded from www.dfes.gov.uk/sreguidance

DRUG EDUCATION

35. Learning about the effects of solvents, alcohol, tobacco and other drugs on body functions is a compulsory part of science in the national curriculum. It is for individual schools to consider whether, and if so how, they might wish to extend the provision for drug education beyond this.
36. Drug education should be delivered through well-planned PSHE and citizenship provision. Schools are expected to use the non-statutory frameworks of PSHE and citizenship at Key Stages 1 and 2, PSHE 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 as the basis for developing drug education.
37. All schools should have a school policy on preventing drug misuse. It should set out the aims of the school's programme of drug education and summarise their policy on what to do if drugs or drug taking are discovered. The DfES publication *Drugs Guidance for Schools* offers guidance on drug prevention and preparing a drugs policy.

CAREERS EDUCATION AND GUIDANCE

38. All publicly funded secondary schools, including specialist schools and pupil referral units, are required to provide a programme of careers education to pupils in Years 9–11 (chapter 44, Part VII, [paragraph 43 of the Education Act 1997](#)). Within this, each secondary school must have an accessible careers library that contains up to date information on careers and post-16 progression opportunities (section 45 of the Education Act 1997). From September 2004 this requirement also covered young people in Years 7 and 8 (see SI 2003 2645 The Education Extension of Careers Education (England) Regulations 2003).
39. There is no prescribed programme of study for careers education, but the DfES has published a national non-statutory framework for careers education and guidance for 11–19-year-olds. This describes aims, learning outcomes and content for careers education programmes. The Careers Education Support Programme provides exemplar schemes of work to use alongside the framework.
40. The Secretary of State for Education and Skills has a duty to ensure the provision of careers services for school and college students (section 8 Employment and Training Act 1973). Maintained schools, pupil referral units, further education and sixth form colleges must work in partnership with the Connexions Service to make impartial careers guidance available to young people.

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RELIGIOUS EDUCATION

41. All maintained schools must provide RE for their pupils. The precise nature of that religious education at a foundation or voluntary school will depend on the religious character of the school. Whether a foundation or voluntary school has a religious character and the particular religion or religious denomination concerned is set out in *The Designation of*

Schools Having a Religious Character (England) Order 1999. There are no foundation special schools that have a religious character.

42. All community schools and all foundation and voluntary schools without a religious character must provide RE for all registered pupils (apart from those who have been withdrawn by their parents). Teaching will follow the agreed syllabus for the area, which is drawn up by a local conference of teachers, local churches, faith groups and the LA. The headteacher shares responsibility with the LA and the governing body for making sure that the RE requirements are met.
43. All locally agreed syllabuses must reflect the fact that the religious traditions in Great Britain are in the main Christian, while taking account of the teaching and practices of the other principal religions represented in Great Britain. The DfES, in partnership with the QCA, issued a non-statutory national framework for RE in October 2004, which supports those with a responsibility for RE in maintained schools, principally LAs, and sets national standards and expectations to help promote higher standards in teaching and learning.

Voluntary aided schools with a religious character

44. RE in a voluntary aided school with a religious character must be provided in accordance with the school's trust deed or, where provision is not made by a trust deed, in accordance with the beliefs of the religion or denomination specified in the Order referred to above.
45. Where parents ask for RE to be provided for any pupils according to the locally agreed syllabus, and it is not convenient for them to attend a school at which the syllabus is in use, the governing body must make arrangements. This requirement is lifted if, because of any special circumstances, it would be unreasonable to do so.

Foundation and voluntary controlled schools with a religious character

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

COLLECTIVE WORSHIP

47. All maintained schools must provide for collective worship for their pupils. The precise nature of the collective worship and religious education at a foundation or voluntary school will depend on the religious character of the school. To determine whether a foundation or voluntary school has a religious character and the particular religion or religious denomination concerned, refer to guidelines set out in [The Designation of Schools Having a Religious Character \(England\) Order 1999](#): SI 1999 No. 2432.
48. All maintained schools must provide daily collective worship for all registered pupils (apart from those who have been withdrawn from this by their parents). This is usually provided within daily assembly but can also be done within individual classes or groups of children. This may be particularly appropriate for younger children in primary schools.
49. For community schools and foundation schools without religious character, the headteacher is responsible for arranging the daily collective worship after consulting with the governing body. For voluntary schools and foundation schools with a religious character, the governing body is responsible for arranging daily collective worship after consulting with the

headteacher. Daily collective worship must be wholly or mainly of a broadly Christian character. The precise nature will depend on the family background, ages and abilities of the pupils.

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

Foundation schools with a religious character and voluntary schools

51. 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.

CIRCUMSTANCES WHERE THE NATIONAL CURRICULUM MAY NOT APPLY

52. The national curriculum offers schools considerable flexibility to develop their curriculum to meet the needs of the majority of pupils, for example by the inclusion statement, which allows programmes of study to be modified to suit a pupil's needs. In exceptional circumstances, where it does not maximise the learning and achievement of some individual pupils, headteachers may consider disapplying some parts of the curriculum. Guidance that explains when and how to disapply aspects of the national curriculum is set out in DfES 0076/2003 or at www.dfes.gov.uk/disapply

53. The purposes of disapplication for individual pupils are:

- 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) ;
- for specific purposes for the duration of Key Stage 4, through Regulations under [Section 91 of the Education Act 2002](#);
- through a statement of special educational needs under [Section 92 of the Education Act 2002](#).

54. Disapplication, with the exception of disapplication under Section 91, 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

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

DISAPPLICATION OF THE NATIONAL CURRICULUM AT KEY STAGE 4

56. The Key Stage 4 disapplication Regulations were amended with effect from September 2004, as a result of which it is only possible to disapply science to allow pupils to undertake a course of extended work-related learning. Up until this date it had also been possible to disapply design and technology and/or modern foreign languages for any purpose providing it educationally benefits the pupil. However, the introduction of the entitlement areas for design and technology and modern foreign languages (see paragraph 11 of this chapter) means that there is no longer a need for the disapplication arrangements relating to these subjects. Therefore, the parts of the disapplication Regulations relating to design and technology and modern foreign languages ceased to have effect from September 2004.
57. In addition, once the new programme of study for science is introduced in September 2006 (see paragraph 14 of this chapter), there will no longer be a need to retain those parts of the disapplication arrangements relating to science. As a result, the Key Stage 4 disapplication Regulations will be withdrawn for those young people entering Year 10 in September 2006.

DISAPPLICATION THROUGH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS (SEN)

58. 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 from the programme of study from an earlier Key Stage may be used without the need to disapply. For Key Stage 4 pupils, Section 91 disapplication may be appropriate and sufficient to meet the pupil's special educational needs. 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' special education needs is given in the *Special Educational Needs Code of Practice* (DfES).

DISAPPLICATION FOR CURRICULUM DEVELOPMENT WORK OR EXPERIMENTS

59. Disapplication under Section 90 enables schools to develop their curriculum beyond that which is facilitated by the general flexibility within the national curriculum and the other disapplication provisions. It allows schools to disapply aspects of the national curriculum 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.

60. The application to the Secretary of State for Education and Skills may be made by:

- i) the governing body (with local authority agreement)
- ii) the local authority (with governing body agreement)
- iii) QCA (with agreement of both the local authority and governing body)

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- i) the governing body
- ii) QCA (with agreement of the governing body)

61. The application must be agreed by the governing bodies of all schools it includes and their LAs. Further details are available in the *Disapplication of the National Curriculum (Revised)* guidance, which was issued in January 2003.

COMPLETING KEY STAGE 4 REQUIREMENTS EARLY

62. Schools can stop teaching the national curriculum Key Stage 4 programmes of study before the end of Year 11 to any pupils in any subject except PE. However, they can only do this after they have taught the programmes of study in full and, if appropriate, entered

the pupils in GCSE or other examinations. This allows pupils to progress beyond Key Stage 4 in those subjects or take up other subjects. Any programme of study at any Key Stage may be completed early in this way freeing up time for other learning, but the flexibility is likely to be of most use at Key Stage 4.

COMPLAINTS ABOUT THE CURRICULUM

63. All LAs have to set up procedures, approved by the Secretary of State for Education and Skills, 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.
64. 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;
 - to follow the law on charging for school activities;
 - to offer only approved qualifications or syllabuses;
 - to provide RE and daily collective worship;
 - to provide the information that they have to provide;
 - to carry out any other statutory duty relating to the curriculum;
 - to act reasonably in any of the above cases.

National curriculum documents

65. In November 1999, copies of the revised national curriculum documents were sent to headteachers and the chair of governing bodies with order forms. If orders were not made at this time, it may still be possible to order. Please call the order line (0845 60 222 60) for an order form, or with the school's DfES number to make an order.

The Foundation Stage was established in September 2000 and the core reference document, the *Curriculum Guidance for the Foundation Stage*, was sent to all schools in May 2000. The Foundation Stage Profile handbook was sent to schools in January 2003. Further copies of both can be obtained from QCA Publications on 08700 606 015.

THE LAW

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

Education Acts

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

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

The Education Act 1997: [Part IV](#) and [VII](#)

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

[The Learning and Skills Act 2000](#)

National Curriculum Orders

The Foundation Stage is governed by a statutory order: [The Education \(national curriculum\) \(Foundation Stage Early Learning Goals\) \(England\) Order 2003](#) No 391.

This establishes the *Curriculum guidance for the foundation stage* as the document which contains the statutory early learning goals and to which staff must have regard in planning and providing learning activities for children in nursery and reception classes.

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.

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in English\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in mathematics\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in science\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in modern foreign languages\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in design and technology\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in information and communication technology\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in physical education\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in history\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in geography\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in art and design\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in music\) \(England\) Order 2000](#)

[Education \(National Curriculum\) \(Attainment Targets and Programmes of Study in citizenship\) \(England\) Order 2000](#)

National Curriculum Assessment Orders

[The Education \(National Curriculum\) \(Foundation Stage Profile Assessment Arrangements\) \(England\) Order 2003](#) No 1327

[Education \(National Curriculum\) \(Key Stage 1 Assessment Arrangements\) \(England\) Order 2004](#) No 2783

[Education \(National Curriculum\) \(Key Stage 2 Assessment Arrangements\) \(England\) Order 2003](#) No 1038

[Education \(National Curriculum\) \(Key Stage 3 Assessment Arrangements\) \(England\) Order 2003](#) No 1039

Other Orders

[The Designation of Schools Having a Religious Character \(England\) Order 1999](#): SI 1999 No. 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 \(National Curriculum\) \(Exceptions at Key Stage 4\) \(England\) Regulations 2000: SI 2000/1140](#)

[The Education \(National Curriculum\) \(Exceptions at Key Stage 4\) \(England\) Regulations 2003: SI 2003/252](#)

[Education \(School Performance Information\) \(England\) Regulations 1999 : SI 1999/1178](#) (as amended by [SI 1999/2158](#), [SI 1999/2387](#), [SI 2000/1089](#), [SI 2000/2116](#) and [SI 2000/2832](#), [SI 2001/3446](#), [SI 2002/1172](#), [SI 2002/2017](#), [SI 2003/2135](#), [SI 2004/1377](#), [SI 2004/2141](#) and [SI 2005/51](#))

GUIDANCE

DfES/0076/2003 Disapplication of the National Curriculum (revised)

QCA 99/359 Learning outcomes from careers education and guidance

DfEE Code of Practice on Identification and Assessment of Special Educational Needs

DfEE 0116/2000 Sex and Relationship Education Guidance

DFE Circular 1/94 Religious Education and Collective Worship

DfES Drugs: Guidance for Schools 2004

DfES/QCA booklet: Key Stage 1 Assessment and Reporting Arrangements

DfES/QCA booklet: Key Stage 2 Assessment and Reporting Arrangements

DfES/QCA booklet: Key Stage 3 Assessment and Reporting Arrangements

QCA Booklet: Maintaining Breadth and Balance at Key Stages 1 and 2

QCA Booklet: Planning, Teaching and Assessing the Curriculum for Pupils with Learning Difficulties www.qcashop.org.uk

DfES documents are available on the website www.dfes.gov.uk, or on the national curriculum website www.nc.uk.net, or through the publication line (tel: 0845 602 2260). QCA documents are available from their website at www.qca.org.uk or through their publication line (tel: 08700 606 015).

Subject orders and Regulations are available on OPSI's website at www.hmsso.gov.uk or through the publication line (tel: 0870 600 5522).

7 CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND OTHER VULNERABLE CHILDREN

CHAPTER SUMMARY

Special education has never been a matter 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. Essentially this has been that children with special educational needs should normally be educated in mainstream schools unless their parents disagree. [The Education Act 1996](#) sets the framework for this. The 1993 Education Act, which was replaced by the 1996 Act, enabled the Secretary of State for Education and Skills to issue a Code of Practice on identifying and assessing SEN. The Code (current version issued in 2001) sets out detailed guidance on all aspects of providing for special educational needs in mainstream and special schools. All schools, Local Authorities (LAs) and other providers must take account of the Code. In addition, the [SEN and Disability Act 2001](#) strengthened the right to a mainstream education for pupils with special educational needs.

Governing bodies have important responsibilities towards children with special educational needs, whether or not they have a statement. These responsibilities are summarised in this chapter.

Schools and their governing bodies have an important role in supporting LAs to discharge their duty under [Section 52 of the Children Act 2004](#) “to promote the educational achievement of looked-after children”.

DEFINITIONS

1. Legally, a child is defined as having special educational needs (SEN) if he or she has a learning difficulty which needs 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, it means a child has a disability which prevents or hinders him or her in making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the Local Authority (LA). The children who need special education are not only those with obvious learning difficulties, such as those who are physically disabled, deaf or blind. They include those whose learning difficulties are less apparent, such as slow learners and emotionally vulnerable children. Many school children may need special educational help at some stage in their school careers.
2. Special educational arrangements can be made in many different ways. It can mean extra help for a child being taught in an ordinary class, or it can involve teaching the child in a specially resourced provision unit attached to a mainstream school, or in a special school. In a few cases the needs of a child may be very complex or severe and require the LA to make a statutory assessment based on specialist advice.

ASSESSMENTS

3. The LA retains overall responsibility for SEN provision and is responsible for formally assessing children with special educational needs in their area who may need a statement of SEN. A child can be referred to the LA for assessment by the child's parents. Schools

may also ask the LA to assess a child whom they think may need a statutory assessment. The LA has six weeks from referral to consider whether a statutory assessment is necessary. At the end of this period it must inform the parents of its decision.

4. Guidance for carrying out a statutory assessment is given in chapter 7 of the SEN Code of Practice. Parents must be closely involved and their views carefully considered at all stages of the assessment process. The LA must also seek educational, medical, psychological, and social services' advice, and any other advice 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.

STATEMENTS OF SEN

5. The statement identifies all the child's special educational needs and the arrangements needed to meet those needs, either in a mainstream school, or in a community special or foundation special school. The LA must first, within two weeks of deciding to make a statement, send a proposed statement to parents. The statement is in six parts:

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

6. All advice received and taken into consideration during the assessment including parental, educational, medical, psychological and social services' advice, must be attached to the proposed statement.
7. The proposed statement must be completed, except for Part 4, which should be left blank. Parents can then say which school in the maintained sector they prefer their child to go to. LAs must meet the parents' preference unless:
 - the school is unsuitable for the child's age, ability, aptitude or special educational needs;
 - the placement would affect the efficient education of other children;
 - the placement would affect the efficient use of resources.
8. 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. Parents can make representations for a placement outside the maintained sector. The LA must consider parents' representations before making a decision on whether to name the school on a pupil's statement.
9. Within eight weeks of issuing the proposed statement, the LA must have the final statement, giving the parents a copy. The process of making an assessment and statement should take no longer than six months.

10. Each statement must be reviewed at least once a year. Chapter 9 of the Code of Practice gives detailed guidance on carrying out a review. The annual review in Year 9 will involve other agencies such as the Connexions Service and the social services that are likely to play a major role when the child leaves school. A Transition Plan will be prepared, drawing together information from a range of individuals within and beyond the school, in order to plan coherently for the young person's transition to adult life.
11. As part of the review process, the LA must keep reviewing what they provide for teaching children with special educational needs. LAs have a general duty to educate a child in ordinary schools, as long as this is consistent with the parents' wishes and the child receives the appropriate special educational provision, and the child's inclusion would be compatible with the efficient education of other children. Further information is available from the Department for Education and Skills's (DfES's) guidance *Inclusive Schooling: Children with Special Educational Needs*.

APPEALS

12. The Special Educational Needs and Disability Tribunal (SENDIST) considers parents' appeals against the decisions of LAs about children's special educational needs if parents cannot reach agreement with the LA. It also hears claims of disability discrimination in education. The Tribunal is independent of central and local government.

Special educational needs appeals

13. SENDIST can hear parents' appeals against LA decisions about children's' special educational needs. Parents can appeal to the tribunal if the LA:
 - refuses to carry out a statutory assessment of their child's special educational needs; or
 - refuses to issue a statement of their child's special educational needs.

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

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

Parents can also appeal if the LA:

- refuses to change the school named in their child's statement, if the statement is at least a year old, but the parent can only ask for an LA maintained school and can't ask for a change to the type of school named;
- refuses to re-assess their child's special educational needs if the LA has not made a new assessment for at least six months;
- decides not to maintain a statement for their child; or
- decides not to change their child's statement after carrying out a reassessment.

14. SENDIST'S booklet *Special Educational Needs: How to appeal* provides full information on when parents can appeal and how to go about it. It gives clear information about decisions that can be appealed and the whole process of making an appeal. A copy can be obtained by telephoning 0870 241 25555.

Disability discrimination in schools

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

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- 15a. SENDIST produces a further booklet, *Disability Discrimination in Schools: How to make a claim*. This provides information about when and how parents can make a claim. A copy can be obtained by telephoning 0870 606 5750.

Information about SENDIST is also available on its website: www.sendist.gov.uk

RESPONSIBILITIES OF THE GOVERNING BODY

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

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

19. In summary form, governing bodies of special schools have legal duties under the 1996 Act to:
 - make every effort to see that the necessary special arrangements that a child's learning difficulties call for are made;
 - make sure that the "responsible person" tells all staff that are likely to teach the pupil in question about his or her special needs (the person can be the headteacher, but may be the chair of the governing body or a governor appointed by the governing body with that responsibility);
 - report each year to parents on their policy for pupils with special educational needs;
 - take account of the Code of Practice when carrying out their duties towards all pupils with special educational needs.
20. Under the [Education \(Special Educational Needs\) \(Information\) \(England\) Regulations 1999](#), 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)

21. The SEN Code of Practice makes clear that all schools should admit pupils with already identified special educational needs, as well as identifying and providing for pupils not previously identified as having special educational needs. Admission authorities may not refuse to admit a child because they feel unable to cater for their SEN pupils. Pupils with special educational needs, but without statements, must be treated as fairly as all other applicants for admission. Admission authorities must consider applications from parents of children with special educational needs, but no statement, on the basis of the school's published admissions criteria. Such children should be considered as part of the normal admissions procedures. Admission authorities cannot refuse to admit children on the grounds that they do not have a statement or are currently being assessed.

Admission of SEN pupils with statements to mainstream schools

22. There is a clear expectation under [Section 316 of the Education Act 1996](#) (as amended by Section 1 of the SEN and Disability Act 2001) that pupils with statements will be included in mainstream schools. LAs have a general duty to ensure that a child is educated in a mainstream school unless that is incompatible with the efficient education of other children or with parental preference. A parent's wish to have their statemented child educated in a mainstream school should only be refused in the small minority of cases where the child's inclusion would be incompatible with the efficient education of other children. LAs must consult the governing body of a mainstream school before naming it in Part 4 of a statement and send them a copy of the statement. LAs and governing bodies should respond to consultation in good time, normally within 15 working days. The statementing LA should consider carefully any representations they receive from governing bodies or other LAs, but the final decision rests with the LA.
23. If an LA considers that the education of a particular child in a mainstream school would be incompatible with the efficient education of others, it must consider whether there are any reasonable steps they could take to prevent the child's inclusion from having that effect. In relation to a particular maintained school, they must consider the reasonable steps that they or the governing body could take.
24. [Schedule 27 of the Education Act 1996](#) determines whether a parent's preference for a particular maintained school is met. Parents may express a preference for a particular maintained school they may wish their child to attend. LAs must comply with a parental preference unless the school is unsuitable to the child's age, ability, aptitude or special educational needs, or the placement would be incompatible with the efficient education of the other children with whom the child would be educated, or with the efficient use of resources. Once a maintained school is named in a child's statement, the governing body must, under [Section 324\(5\)\(b\) of the Education Act 1996](#) admit the child.
25. Parents have the right of appeal to SENDIST if they disagree with the school named in Part 4 of the statement, or with the parts of the statement describing the child's special educational needs (Part 2) and the special educational help the LA thinks the child should get (Part 3). Governing bodies do not have a right of appeal to SENDIST.

Further information on admissions is contained in the SEN Code of Practice, paragraphs 1:33 to 1:36, and in chapter 10 of this Guide (Admissions).

Admissions to special schools

26. 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.

27. Before naming a special school in a statement, LAs must consult the school's governing body (and the home LA, where the school is maintained by another LA). LAs and governing bodies should respond to consultation in good time, normally within 15 working days. The statementing LA should consider carefully any representations they receive 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 organised arrangements, i.e. the number, age, sex, special educational needs of day and boarding pupils for whom the school is organised to make provision.
28. The number of pupils for which a school is organised to make provision can be increased by ten or twenty per cent, whichever is the lesser, without the need for publication of statutory proposals (see chapter 18 of this Guide on Organisational changes to the school). It is not intended that LAs should routinely name schools that are already admitting pupils up to their organised number in statements. The provision is intended to offer a degree of flexibility that will allow the occasional additional pupil to be placed at a special school when it is decided that this is the most appropriate way forward.
29. Pupils may be admitted to a special school established in a hospital where there is a need for hospital treatment.

TEACHERS IN ORDINARY SCHOOLS WITH RESPONSIBILITY FOR SPECIAL EDUCATIONAL NEEDS

30. The SEN Code of Practice says that each school should have a named teacher who is responsible for:
 - the day-to-day running of the school's SEN policy;
 - working with and advising fellow teachers;
 - co-ordinating the teaching provided for children with special educational needs and overseeing the records on all pupils with special educational needs;
 - keeping in touch with parents of children with special educational needs;
 - contributing to the in-service training of staff;
 - working with external agencies including the educational psychology service and other support agencies, medical and social services and voluntary bodies (this is the role of the SEN co-ordinator (SENCO)).
31. In a small school, one person acts as the SENCO and is possibly the headteacher or deputy headteacher. In larger schools, there may be a SENCO or learning support team. The time and attention that the SENCO is able to devote to his or her responsibilities will depend upon the circumstances of particular schools. Governing bodies and headteachers must think carefully about the SENCO's timetable in the light of the Code of Practice and the resources available to the school. The Training and Development Agency (TDA) has published national standards for SENCOs. These set out the knowledge, skills and understanding that SENCOs should have to carry out the role effectively.
32. All initial teacher training courses cover special education to some extent. The TDA has published national standards for new teachers that expect all newly qualified teachers (NQTs) to be familiar with the Code of Practice, to be able to identify pupils who have special educational needs and to know where to get help to give these pupils the support they need. In-service training is available covering many aspects of special education and governing bodies may wish to encourage teachers to take such training.

NATIONAL CURRICULUM

33. The national curriculum applies to pupils with SEN, but may be changed or not applied in specific cases. This is explained in Chapter 6 of this Guide (The curriculum). All teachers must, as part of the General Teaching Requirements of the national curriculum, 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

34. Pupils with special educational needs may require extra help. For pupils attending mainstream schools who require extra help, but do not have a statement, costs are normally met from the school's delegated budget. The LA should take account, in setting school budgets, of the fact that some schools will have more pupils with special educational needs 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.
35. In November 2001, the DfES published guidance called *The Distribution of Resources to Support Inclusion*, covering approaches to the delegation and distribution of resources, or meeting the needs of pupils with special educational needs and those with other additional needs in mainstream schools.
36. LAs are required under the [Special Educational Needs \(Provision of Information by Local Education Authorities\) \(England\) Regulations 2001](#) to publish an explanation of that element of provision for children with special educational needs (but without statements). The explanation should state what proportion of provision the LA expects to be met from maintained schools' budget shares and what proportion it expects to be met from funds that it holds centrally.

EDUCATION OF LOOKED AFTER CHILDREN

School admissions

- 36a. Under section 106 of the Education Act 2005 the government has introduced regulations (The Education (Admission of Looked after Children) (England) Regulations 2006) which from September 2007 require admission authorities, with some limited exceptions, to give top priority to looked after children over other children in their oversubscription criteria.

Amendment 1
May 2006

Promoting the educational achievement of looked after children

37. [Section 52 of the Children Act 2004](#) places a duty on LAs to promote the educational achievements of children looked after by them, wherever they are placed. This means they must give particular attention to the educational implications of any decision about the welfare of those children.
38. Statutory guidance describes the essential actions LAs are expected to take in order to comply with their duty. The purpose of the duty and accompanying statutory guidance is to tackle the serious underachievement of looked after children by bringing their attainment closer to their peers. The statutory guidance builds on good practice described in *Guidance on the Education of Children in Public Care*, published jointly by the DfES and Department of Health (DH) in May 2000.
39. The government expects schools to take a proactive approach to co-operating with and supporting LAs in discharging the duty, so that looked after children receive the support they need to achieve and succeed. Schools and governors should ensure that school policy and procedure are consistent with measures set out in the statutory guidance on the duty. To this end DfES has issued practical guidance *Supporting Looked After Learners* to all governing bodies to help them implement the policies and procedures that will help their looked after children achieve their potential.

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May 2006

Amendment 1
May 2006

Amendment 1
May 2006

40. (Text removed)

41. It is important that the LA ensures that designated teachers have an up to date copy of the looked after child's Personal Education Plan (PEP). The PEP forms part of his or her education record under [The Education \(Pupil Information\) \(England\) Regulations 2005](#)
42. For guidance on the education of looked after children and exemplar PEPs please see the DfES Education Protects website at www.dfes.gov.uk/educationprotects

SICK CHILDREN

43. LAs have a duty to provide suitable education for children of compulsory school age who cannot attend school due to illness or injury. This education might be provided in a number of ways, for example in hospital schools, in pupil referral units (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.
44. In November 2001 the DfES, jointly with the DH, published statutory guidance called *Access to education for children and young people with medical needs*, which sets out national minimum standards of education for children who cannot attend school because of illness or injury. A four-page summary is also available. The guidance states that all mainstream schools should have a written policy and procedures for dealing with the education of children with medical needs.
45. Governors need to ensure that such a policy is in place and that there is close liaison between teachers and the LA/hospital and home tuition service, so that programmes of work are available to pupils, social contacts are maintained and the school is able to assist successful reintegration.
46. The DfES has also published the research report *Access to Education for Children and Young People with Medical Needs – A Map of Best Practice*, which includes tools to help mainstream teachers evaluate their practice in this area. These documents and further information are available at www.dfes.gov.uk/sickchildren

MENTAL HEALTH IN SCHOOL SETTINGS

47. There is increasing evidence that schools can promote all children's mental health and intervene effectively with those children experiencing problems. In June 2001, the DfES 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 that includes case studies of useful practice. The guidance and a summary are available at www.dfes.gov.uk/mentalhealth

DISABILITY DISCRIMINATION

48. Education legislation does not distinguish between special educational needs and disability. The definition of disability used in the [Disability Discrimination Act 1995](#) is wide and could include a significant proportion of, although not all, children with special educational needs (see chapter 11 of this Guide on Equal opportunities and school governors).
49. The Special Educational Needs and Disability Act 2001 amended the Disability Discrimination Act 1995 to include education in schools. The new duties on LAs and schools came into force on 1 September 2002. The amendments placed a duty on schools not to discriminate against disabled pupils or prospective pupils on the grounds of disability. They also placed a duty on LAs and schools to plan to increase access to education for disabled pupils over time.
50. The Disability Rights Commission (DRC) has produced the guidance *Code of Practice for Schools*, explaining their duties under Part 4 of the Disability Discrimination Act 1995. Copies may be obtained from DRC on 0845 762 2633 or via their website at www.drc-gb.org

THE LAW

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

Education Act 1996: Part IV

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

Disability Discrimination Act 1995: Part IV

Special Educational Needs and Disability Act 2001

Education (Special Educational Needs) (England) (Consolidation) Regulations 2001: SI 2001/3455

Education (Special Educational Needs) (Information) (England) Regulations 1999: SI 1999/2506

Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001: SI 2001/2218

The Education (Pupil Information) (England) Regulations 2005: SI 2005/1437

GUIDANCE

Special Educational Needs Code of Practice (DfES, 2001, Ref: DfES/0581/2001)

SEN Toolkit (DfES, 2001, Ref: DfES/0558/2001)

Inclusive Schooling: Children with Special Educational Needs (DfES, 2001 Ref: DfES/0774/2001)

DfE Circular 6/94: The Organisation of Special Educational Provision – Order from DfES Publications at www.dfespublications.gov.uk

Access to Education for Children and Young People with Medical Needs (DfES, 2001 Ref: 0732/2001). The document and further information is available at www.dfes.gov.uk/sickchildren

Promoting Children's Mental Health within Early Years and School Settings (DfES, 2001 Ref: 0112/2001). The document and other information is available from www.dfes.gov.uk/mentalhealth

Special Educational Needs: A Guide for Parents and Carers, (DfES, 2001 Ref: DfES/0800/2001). Other useful SEN information can be found at www.dfes.gov.uk/sen
Special Educational Needs: How to Appeal (Ref: TR1 002)

Disability Discrimination in Schools: How to make a claim (Ref: HTC 001)

Answering a claim of disability discrimination: a guide for responsible bodies (Ref: GRB 001). Further information can be found on the SENDIST website at www.sendist.gov.uk

Education Protects – guidance on the education of children and young people in public care (DfEE, 2000 0269/2000)

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. Copies can be downloaded from the Education Protects website at www.dfes.gov.uk/educationprotects

Supporting Looked after Learners: A practical guide for school governors (DfES, 2005 Ref: LEA/0168/2002)

Accessible Schools: Planning to increase access to schools for disabled pupils (DfES, 2002 Ref: LEA/0168/2002)

The Distribution of Resources to Support Inclusion: Ref: LEA/080/2001 – Copies can also be accessed via the SEN website at www.dfes.gov.uk/sen

Copies of guidance listed above (unless otherwise indicated) can be obtained from DfES Publications (tel: 0845 602 2260 or email: dfes@prolog.uk.com). Please quote the document reference.

8 THE SCHOOL BUDGET

CHAPTER SUMMARY

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

SCHOOL FUNDING

1. The vast majority of schools' income comes via central government grants paid to Local Authorities (LAs): this means that there is no requirement for LAs to contribute to school funding from local taxation, although they are free to do so if they choose to. The main grant that LAs receive for schools is called the Dedicated Schools Grant (DSG).
2. Schools are free to raise extra funds through voluntary contributions from parents and others, or through a variety of activities such as renting out school premises or running additional activities that generate income. When considering the types of activities a governing body wishes to run, it must ensure that its budget share is not used to subsidise, or in any other way contribute to, the costs of activities that do not fall within the School Budget Shares (Prescribed Purposes) Regulations governing the proper use of a school's budget share. Further guidance on these matters can be found in chapter 16 of this Guide (Charging for school activities).
3. The DSG is paid to LAs (not directly to schools) as they have responsibility for the distribution of funding to individual schools in their local area. In many respects, the system for distribution of resources to schools under the new arrangements introduced from April 2006 is very similar to that which existed before. However, there is a difference in one important respect. From April 2006, LAs have been required to provide schools with a budget allocation for the coming year, plus an indication of what their budget will be for up to the two following years. In general, each multi-year period over which budgets are allocated and notified to schools will follow the pattern determined nationally by the Treasury's Spending Review cycle.
4. So, for example, in April 2006 schools will be in receipt of a budget for 2006–7 plus an indication of what their budget will be in 2007–8. Before April 2007, this indicative budget will be firmed up to provide schools with their actual allocation for 2007–8. As a new three-year Spending Review begins in April 2008, schools will receive, just prior to April 2008, budget information covering three years (2008–11). Again, prior to the start of each year within this multi-year period, the notified budget will be firmed up in order to finalise the actual allocation a school will receive for that particular year.
5. LAs are required to calculate the budgets of all schools maintained by them using a funding formula and to set the framework for the financial relationship that operates between them and the schools they maintain. Under this arrangement, governing bodies have delegated to them a large degree of management responsibility for the running of their schools.
6. Each LA's formula is governed by national Regulations and is designed to bring about an equitable allocation of resources between schools, based on objectively measured needs rather than historical spending patterns. Therefore, within each LA area, schools with the same characteristics and the same number of pupils receive the same level of financial resources under the LA's formula. "Delegation" of financial resources in this context

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concerns the proportion of the LA's total expenditure on schools that is allocated to the schools themselves in budget shares through the authority's formula, as distinct from being retained and managed centrally by the LA.

7. The school funding system is based on the legislative provisions in [Sections 45–53 of the School Standards and Framework Act 1998](#) (SSFA), and except where specified otherwise, references in this Section to statutory provisions are references to the 1998 Act. Under this legislation (which was amended in some respects by Sections [41–43](#) and [45](#) of the Education Act 2002 and [Section 101](#) and [Schedule 16](#) of the Education Act 2005), LAs determine the size of their LEA Budget and Schools Budget. In line with the requirement to provide schools with multi-year budgets, LAs are required to set the size of their Schools Budget for each year of a multi-year period.
8. The LEA Budget and Schools Budget are the names given to the component parts of an LA's total spending on education. The LEA Budget covers the strategic management function, while the Schools Budget includes all the funding that is spent on pupil provision in the form of delegated budgets to schools and LA-retained funding for provision, such as pupil referral units and high-cost special educational needs (SEN). In line with the requirement to provide schools with multi-year budgets, LAs are required to set the size of their Schools Budget for each year of a multi-year period.
9. The size of an LA's Schools Budget for any year in the multi-year period must be at least that of the DSG plus any funding an LA receives from the Learning and Skills Council (LSC) for post–16 provision in maintained schools. However, LAs are able to add to its size from their own locally raised resources if they choose to. Unlike the Schools Budget, an LA's LEA Budget is part of the general local government settlement and is made up of a combination of a central government grant and local taxation.
10. The types of activity or expenditure that resources in the LEA Budget and the Schools Budget can support are prescribed by Regulations made by the Secretary of State for Education and Skills under [Section 45A of the SSFA](#). Included within them is all expenditure, direct and indirect, on an LA's maintained schools (including maintained nursery schools) and pupil referral units. Expenditure in the LEA Budget is incurred by the LA itself. In addition, LAs may retain some funding centrally within their Schools Budget for purposes defined in the same Regulations.
11. The amounts to be retained centrally within the Schools Budget are decided by each LA to reflect local circumstances, but are subject to certain limits and conditions prescribed by the Secretary of State for Education and Skills. Prior to April 2006, these limits and conditions could only be varied only with the agreement of the Secretary of State for Education and Skills. However, since April 2006, a local Schools' Forum has been able to agree to relax or vary some of these limits. Where agreement of the Schools' Forums cannot be reached, the Secretary of State for Education and Skills will retain the power to agree such changes where he or she feels it appropriate. The balance of the Schools Budget left after deduction of centrally retained funds is termed the Individual Schools Budget (ISB).
12. LAs must distribute the whole of their ISB among their maintained schools using a formula that accords with Regulations made by the Secretary of State for Education and Skills under [Section 47 of the SSFA](#) and enables the calculation of a budget share for each maintained school. Schools will receive notification of the size of their budget share for each year of a multi-year period, but as each year for which a budget has been notified approaches, it will be updated to reflect, at the very least, pupil number change. The extent to which other elements of a school's indicative budget will be updated once notified (for example funding for deprivation, SEN, etc.), will be dependent on provisions within each LA's formula which will have been developed in consultation with (and since April 2006, in some cases only by the agreement of) its Schools' Forum.

13. The budget share of a school for the actual year being funded is then delegated to the governing body of the school concerned, unless the school is a new school which has not yet received a delegated budget, or the right to a delegated budget has been suspended in accordance with [Section 51 of the SSFA](#). The financial controls within which delegation works are set out in a scheme for the financing of schools made by the LA in accordance with Section 48 of the SSFA and approved by the Secretary of State for Education and Skills. All revisions to the scheme must also be approved by the Secretary of State for Education and Skills who has power to modify schemes or impose one.
14. Schools with a delegated budget may spend budget shares for “the purposes of the school” as stated in [Section 50\(3\) of the SSFA](#). This is usually taken to be for the educational benefit of the school’s pupils, but detailed guidance on this has been produced by the Department for Education and Skills (DfES). Schools may also spend budget shares on any additional purposes prescribed by the Secretary of State for Education and Skills in Regulations made under [Section 50 of the SSFA](#). Schools may accumulate savings and carry them forward, but any deficit balances must also be carried forward. From April 2004, all LAs have been able to include within their [Section 48](#) scheme a requirement on governing bodies to say what plans they have for the use of balances that exceed a specified threshold. The requirement should also require balances to be forfeited unless they are assigned to a limited contingency reserve or a designated project.
15. An LA may suspend a school’s right to a delegated budget if the provisions of the school financing scheme (or rules applied by the scheme) have been substantially or persistently breached, or if the budget share has not been managed satisfactorily. There is a right of appeal to the Secretary of State for Education and Skills.
16. Under [Section 52 of the SSFA](#) each authority is obliged to publish a statement setting out details of their planned LEA Budget and Schools Budget each year. In the case of the Schools Budget for each year of a multi-year period, they must show the amounts that will be centrally retained, the budget share for each school, the formula used to calculate those budget shares and the detailed calculation for each school. After each financial year, the authority must publish a statement showing out-turn expenditure at both central level and for each school, as well as the balances held in respect of each school. Both types of statement are subject to audit certification by the Audit Commission, and information in them may be collated and published by the Secretary of State for Education and Skills. From April 2006, Section 52 statements will also be certified as accurate by an LA’s Chief Financial Officer.
17. The detailed publication requirements for financial statements and for schemes are set out in Regulations made under Sections 52 and 48 of the SSFA respectively, but each school must receive a copy of the scheme and any amendment, and each year’s budget and out-turn statements so far as they relate to that school or central expenditure.
18. From 2002–3 schools have also been obliged to submit income and expenditure returns to the Secretary of State for Education and Skills in conformity with the Consistent Financial Reporting framework.

Repairs and maintenance

19. These costs will normally be paid from the school’s budget share, unless expenditure on the work in question is treated by the LA as being capital expenditure. The LA should be consulted in cases of doubt. The division between capital and revenue works normally depends on a *de minimis* value limit.

School meals

20. The duty to provide free meals to eligible pupils, paid lunches on request and to comply with national nutritional standards rests with the LA. However, an order has been made

under [Section 512A of the Education Act 1996](#) which has the effect of transferring duties to the governing body when funding is delegated. When the governing body has such duties, it may make provision through arrangements it has negotiated, or by buying back into an LA catering service. However, buying back into an LA catering service does not shift the legal duty of provision back to the LA. Governing bodies with meal responsibilities should ensure that meal providers are competent to deal with the various health and safety and other food safety issues that arise in meal provision.

Loss of the right to a delegated budget

21. As mentioned above, an LA may suspend a school's right to a delegated budget under certain circumstances. [Schedule 15 to the SSFA](#) as applied by Section 51, provides that suspension may take place if a school's governing body has persistently or substantially breached a requirement or restriction relating to its delegated budget, or has not managed their budget share satisfactorily. The LA must send a copy of the notice to the governing body, headteacher and Secretary of State for Education and Skills. If such suspension takes place, there is a right of appeal to the Secretary of State for Education and Skills and the LA is required to review the suspension within a certain period (or may do so earlier if it wishes).
22. There is a further right of appeal against refusal to restore the right to a delegated budget. The principal effect of suspension of the right to a delegated budget is that the governing body loses the right to decide on how the budget should be spent (except to a limited extent if the LA so decides), and loses most staffing powers. An LA may also suspend the right to a delegated budget for reasons arising from the powers in [Sections 14–17 of the SSFA](#) (which allow an LA to intervene in schools causing concern). If this happens, such suspensions have the same effect, but there is no right of appeal to the Secretary of State for Education and Skills against the initial suspension.
23. Loss of a delegated budget is a rare event and should remain so because schools and LAs ought to discuss any problems that might lead to suspension. They should also seek to rectify any problems before the need for formal action arises. Schools should therefore co-operate with LA monitoring designed to identify financial problems and take a positive approach to their resolution.

Purchase of legal advice

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

Liability of governing bodies

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

Insurance

26. The LA's duty to maintain the school includes meeting the cost of insurance. For voluntary aided schools this includes the cost of insuring the governing body's effective ten per cent liability for capital building costs (that is, net of DfES's ninety per cent grant). Although there are various categories of insurance, the principal items relate to the protection of buildings and liability insurance. If a school wishes to, it may request delegated funds, so as to make its own arrangements for insurance. In such cases the LA may specify the minimum cover required. Alternatively, the LA may decide to delegate all or some insurance funding to schools generally, and it may either buy back into an LA arrangement or make alternative

provision. Again, the LA may specify the minimum cover required and normally has power to secure such cover and charge the budget share of the school if the governing body does not obtain satisfactory insurance; there is no requirement that the amount delegated should exactly match the cost of securing insurance.

Best Value

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

THE LAW

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

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)

The School Finance (England) Regulations 2006: SI 2006 No. 468

The LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004: SI 2004 No. 3131

The Education (Budget Statements) (England) Regulations 2005: SI 2006 No. 511

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

9 STAFFING

CHAPTER SUMMARY

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

BACKGROUND

1. The Local Authority (LA) is the employer of the staff in community and voluntary controlled schools, whilst the governing body is the employer of the staff in foundation and voluntary aided schools. The governing body and headteacher have separate and particular responsibilities for selecting and managing staff. At any time when a school has a delegated budget the governing body has extensive powers over staffing. It also has responsibilities under employment law.
2. The main staffing functions of the governing body are set out in the [Education \(School Staffing\) \(England\) Regulations 2003](#). These Regulations are made under [Sections 35 and 36 of the Education Act 2002](#). The Regulations also contain responsibilities for the headteacher and the LA in addition to the governing body. Statutory guidance on staffing functions under these provisions has also been produced and must be considered by any party undertaking staffing functions. The staffing Regulations and guidance are available on GovernorNet at www.governornet.co.uk
3. These Regulations and statutory guidance provide for the appointment of a headteacher and deputies; other teachers and support staff; the regulation of conduct and discipline of staff; the suspension and dismissal of staff; the role of the governing body and the headteacher, and advice from the LA and the headteacher on appointments and dismissals. They also include provision for the LA to make written reports on unsuitable headteacher candidates, or where there is serious concern about the performance of the headteacher.

THE ROLE OF THE GOVERNORS AND HEADTEACHER

4. The governing body has overall responsibility for staffing matters at a school. The governing body decides the number of staff (both teaching and support staff). When a member of staff leaves, the governing body will decide whether or not to replace him or her.
5. Many staffing functions may be delegated and the governing body may delegate these to the headteacher, or an individual governor or committee of governors working with or without the headteacher.
6. The normal expectation is for the headteacher to lead the process of making staff appointments outside the leadership group (i.e. other than headteachers, deputy headteachers and assistant headteachers) and for making initial dismissal decisions. The governing body should delegate these functions to the headteacher unless there are good grounds not to do so. In the case of a voluntary aided school with a religious character, the governing body may agree staffing policies which provide for governor involvement in the interests of preserving the school's religious character. The Secretary of State for Education and Skills's guidance on this headteacher responsibility, which includes the circumstances in which these matters are not delegated to the headteacher, is contained in

Section 1 of the statutory staffing guidance available on GovernorNet at www.governornet.co.uk

7. Governors lead the process of making appointments to the leadership group, for hearing appeals against dismissals, and hearing appeals under locally agreed disciplinary and grievance procedures. The governing body must set up a selection panel for appointing a headteacher or deputy headteacher (see below).

APPOINTING THE HEADTEACHER

8. The headteacher is the key figure in the school. The position should be advertised throughout England and Wales unless the circumstances set out in 2.15 to 2.21 of the [Staffing Guidance under Sections 35\(8\) and 36\(8\) of the Education Act 2002](#) apply. (This may be viewed at www.governornet.co.uk/linkAttachments/ACF3B38.doc) The full governing body must set up a selection panel of at least three governors. The selection panel must provide the LA with the details of the candidates selected for interview. The panel interviews any appropriate applicants and then recommends one of the people interviewed to the governing body for approval.
9. If the LA writes to the selection panel about the unsuitability of any candidate within seven days, the selection panel must consider the LA's representations. If they still interview that candidate and wish to recommend that candidate to the governing body, the selection panel must respond to the LA in writing and make the correspondence available to the governing body. The LA or a representative has a right to attend relevant meetings of the selection panel to offer professional advice, but only governors on the selection panel can vote.
10. The governing body has a duty to consider the LA's advice before making a decision. The decision of the selection panel must be endorsed by the full governing body. If the selection panel makes no recommendation, the governing body does not approve a recommendation, or the LA declines to appoint the recommended candidate, the governing body may re-advertise the vacancy. The LA must appoint a candidate recommended by the panel if the recommendation is approved by the governing body, unless the candidate does not meet the staff qualification requirements (described in paragraphs below dealing with teacher qualifications and the General Teaching Council (GTC)).
- VC
F 11. At foundation and voluntary controlled schools with a religious character, the governing body may take into account any candidate's suitability and ability to preserve and develop the religious character of the school.
- VA 12. At voluntary aided schools with a religious character, the governing body may give preference to any candidate whose religious opinions and worship are in accordance with the tenets of the religious denomination of the school.

APPOINTING DEPUTY HEADTEACHERS

13. With the exception of the LA's right to make representations about unsuitable headteacher candidates, the procedure for appointing deputy headteachers is the same as that for headteachers set out in paragraph 8, above. The governing body decides how many, if any, deputy headteachers the school should have. Any vacancies should be advertised throughout England and Wales unless the circumstances set out in 2.15 to 2.21 of the Staffing Guidance under [Sections 35\(8\) and 36\(8\) of the Education Act 2002](#) apply. (This may be viewed at www.governornet.co.uk/linkAttachments/ACF3B38.doc)

The headteacher has the right to attend meetings of the governing body to discuss the appointment of a deputy headteacher and to offer advice. The LA also has this right. The

LA has to appoint the candidate recommended by the governing body unless he or she fails to meet legal requirements or qualifications requirements set out below.

APPOINTING OTHER TEACHING STAFF

14. The governing body decides whether or not to fill a teaching post when it becomes available. If it does so, it must draw up a specification for the post and send a copy to the LA. The post should be advertised unless it is decided to accept a teacher already working at the school or a teacher nominated by the LA. The LA (or a representative) and the headteacher (if not already involved in the selection) have the right to attend selection meetings and to offer advice. The LA must appoint the teacher selected unless the candidate fails to meet the staff qualification requirements described in paragraphs 45–47.
15. The LA cannot insist on moving in a teacher from one of their other schools, but it can put forward qualified candidates for the governing body to consider alongside other applicants. The governing body should normally delegate the selection of staff outside the leadership group to the headteacher, but it also has the legal authority to delegate to one or more governors, or to one or more governors and the headteacher acting together (see Section 1 of the statutory staffing guidance available on GovernorNet at www.governor-net.co.uk).

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

- VA 16. In a voluntary aided school that is a Church of England or Roman Catholic school, the appropriate diocesan authority should have the same advisory rights as the LA with respect to teacher appointments and dismissals.

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

- VC
F 17. In a foundation and voluntary controlled school with a religious character, which is a Church of England or Roman Catholic Church school, the governing body may extend advisory rights over teacher appointments and dismissals to the diocesan authority. These diocesan advisory rights can apply to all teachers, or particular descriptions of teachers, such as the headteacher and deputy headteacher or reserved teachers. Where such advisory rights have been accorded, they will apply in the same way as the LA's advisory rights.

VA RELIGIOUS CONSIDERATIONS IN EMPLOYING TEACHERS AT VOLUNTARY AIDED SCHOOLS

18. In voluntary aided schools that 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. In considering teacher dismissals, the governing body may have regard to any conduct that is incompatible with the precepts, or with the upholding of the tenets, of the religion of the school.
19. At voluntary aided schools whose trustees are trustees of a Roman Catholic religious order, the governing body may appoint as headteacher a candidate proposed by the Major Superior of the order without going through the usual procedures for appointing a headteacher including setting up a selection panel. The governing body may not appoint a candidate who does not meet the qualification requirements described in paragraphs 45–47.

cVVC

F “RESERVED TEACHERS” AT VOLUNTARY CONTROLLED AND FOUNDATION SCHOOLS WITH A RELIGIOUS CHARACTER

20. In voluntary controlled schools and foundation schools that 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.
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 headteacher), but where the number of teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five.
22. The headteacher may not be a reserved teacher but the deputy headteacher may. In appointing a headteacher, the governing body may take into account any candidate’s fitness and ability to preserve and develop the religious character of the school.

TEACHER QUALIFICATIONS

23. Teachers employed at LA-maintained and non-maintained special schools in England and Wales are normally required to have Qualified Teacher Status (QTS). QTS can be gained either through an undergraduate or postgraduate training programme offered by an accredited Initial Teacher Training (ITT) provider, or by following the employment-based teacher training programme such as the Graduate or Registered Teacher Programme, the Overseas Trained Teacher Programme, Teach First and the Flexible and Assessment routes to QTS which are run by the Training and Development Agency (TDA) in England and the National Assembly in Wales. The skills tests is one of the standards teachers need to achieve to gain QTS. The skills test only applies to teachers trained in England. Wales does not have skills tests.

The GTC can advise on teaching qualifications and also if a teacher has been awarded QTS. This can be done by contacting the Teachers’ Qualifications (TQ) Helpdesk by emailing tqanswer@gtce.org.uk or by calling 0121 345 0140.

24. Teachers with relevant professional recognition from Scotland, Northern Ireland or other member states within the European Economic Area may be eligible for QTS without further training. They can confirm their eligibility by contacting the General Teaching Council for England (GTC), Teachers’ Qualifications Section, Victoria Square House, Victoria Square, Birmingham B2 4AJ. However, not all candidates who have a Department for Education and Skills (DfES) teaching reference number will necessarily have QTS or be eligible for it without further training.
25. Schools may also employ, with the consent of the LA, unqualified teachers as instructors if they have special qualifications or experience needed for the post, and where no suitable qualified teacher, graduate teacher or registered teacher is available for appointment or to give instruction. For trainee teachers who have successfully completed their training in England since May 2001, but not yet passed the skills tests, may be employed as unqualified teachers for up to five years, or longer, if approved by the Secretary of State for Education and Skills. Teachers who have not yet undertaken induction, and who are employed on a contract of a term or more, should be offered posts that enable them to work towards the induction standards.

Amendment 1
May 2006

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Overseas Trained Teachers

26. The Education (Specified Work and Registration) Regulations 2003 (SI 2003 No.1663) provide that a person who has successfully completed a programme of professional training for teachers in a country outside the UK and which is recognized as a programme of training by a competent authority in that country may work as a teacher in England for four years. The four year period runs continuously from the first day the person was employed as a teacher 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 the four year period to be extended. If an overseas teacher wishes to continue to work in maintained schools for longer than four years they must gain QTS via the appropriate TDA approved route under the Overseas Trained Teacher Programme and register with the General Teaching Council (GTC).

Amendment 1
May 2006

Teachers employed in special schools

- 26a. Under the requirements laid down in The Education (School Teachers' Qualifications Standards) (England) Regulations 2003 (SI 2003 No.1662) a teacher employed in a school for the purpose of teaching a class of pupils who are hearing impaired, visual impaired or both hearing and visual (multi-sensory) impaired is required, in addition to being a qualified teacher, to possess an additional Mandatory Qualification (MQ) as approved by the Secretary of State. The regulations allow for an aggregate period, not exceeding three years, for a teacher employed in a school to teach such classes, during which to obtain the relevant approved MQ. The GTC has the responsibility of recording the details of a teacher's MQ.

Amendment 1
May 2006

GENERAL TEACHING COUNCIL FOR ENGLAND (GTC)

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

Registration with the GTC

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

Amendment 1
May 2006

Registration fee

29. Since April 2002, like other professional bodies, the GTC has charged an annual registration fee. In some cases schools and LAs may be required by the GTC to deduct registration fees from the salaries of teachers and remit them to the GTC. The GTC will give schools and LAs advance notice of any teachers for whom deductions should be made. Most teachers are reimbursed the fee under the School Teachers' Pay and Conditions Document.

Disciplinary powers of the GTC

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

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

31. The GTC's role does not replace the existing disciplinary powers of schools and LAs in relation to the staff they employ. The GTC's role will usually only begin when a school has ceased to use a registered teacher's services, regardless of whether the person's services are terminated or he or she leaves voluntarily. The GTC has the power to make disciplinary orders against registered teachers. A disciplinary order may stipulate that the teacher's name be removed from the GTC's register or that the teacher should meet specified conditions to maintain registration or should be subject to a reprimand. Where the GTC issues a discipline order it will notify the teacher's employer and decide whether to publish details on its website. The GTC is obliged to send a copy of any disciplinary order made to the Secretary of State for Education and Skills. The Secretary of State for Education and Skills will then consider whether to take action to bar or restrict the teacher's employment under powers contained in in [Section 142 of the Education Act 2002](#) (i.e. to include a person in List 99).
32. Subject to a list of specific exemptions, no one who gained QTS after 7 May 1999 should be employed in a maintained or non-maintained special school in England unless they have completed or are working towards completion of a statutory induction period. If a period of employment of one school term or more is offered to a teacher to whom induction applies and who has not yet completed their induction period, that period of employment counts towards induction and appropriate arrangements for this must be made.

Reporting cases to the DfES and the GTC

33. Employers must report all cases to the DfES where they cease (or might have ceased) to use a person's services because he or she is considered unsuitable to work with children; or as a result of misconduct; or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person's contract is terminated or he or she leaves voluntarily. [The Education \(Prohibition from Teaching or Working with Children\) Regulations 2003](#) list the information that employers are required to supply to the Secretary of State for Education and Skills as part of a report. The police will continue to report convictions and cautions incurred by teachers to the DfES (where they are aware that a person is a teacher).
34. The Secretary of State for Education and Skills will determine whether a case relates to the safety and welfare of children, and if it does not, will pass the papers to the GTC who will then consider the case under its disciplinary functions. There is a similar duty to report cases to the GTC where the employer dismisses a teacher on grounds of incompetence, or would have considered doing so if they had not resigned. This is provided for under [Regulation 29 of the General Teaching Council for England \(Disciplinary Functions\) Regulations 2001](#).

Incompetence

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

Compromise agreements

36. If an employer reaches a compromise agreement about the termination of a teacher's employment, this does not affect the employer's statutory duty to report the case to the Secretary of State for Education and Skills or the GTC. This should be made clear to the teacher.

INDUCTION OF NEWLY QUALIFIED TEACHERS (NQTs)

37. Teachers who obtain QTS after 7 May 1999 must successfully complete an induction period of three school terms (or equivalent) in order to remain eligible for employment as a teacher in maintained schools and non-maintained special schools in England. Subject to a list of specific exemptions, no one who gained QTS after 7 May 1999 should be employed in a maintained or non-maintained special school in England unless they have completed or are working towards completion of a statutory induction period.
38. If a period of employment of one school term or more is offered to a teacher to whom induction applies, and who has not yet completed their induction period, that period of employment counts towards induction and appropriate arrangements for this must be made. NQTs will have a ninety per cent timetable, to allow their induction programme to take place. Under the terms of the [School Teachers' Pay and Conditions Document](#), the professional duties of headteachers include ensuring that teachers serving induction periods do not teach for more than ninety per cent of the time a teacher at that school who does not receive a management allowance, or a teaching and learning responsibility payment, would teach.
39. 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.
40. Funding for the induction of NQTs is no longer channelled through a separate Standards Fund grant, but has been incorporated into the main local government finance system. When making decisions about spending, headteachers should note that a figure of about £1,000 per NQT per term is recommended as an appropriate level of funding for induction purposes. It should be noted that possession of a DfES teacher reference number does not necessarily indicate that a teacher has QTS and if an NQT completes any part of their induction prior to being awarded QTS, it will not count and they will have to start their induction period again.
41. At the end of the induction the appropriate body (i.e. the LA maintaining the school) is responsible for deciding whether the NQT has met the Induction Standards on the basis of the headteacher's recommendation.
- 41a. The statutory requirements allowing a teacher who has failed to complete their induction period an appeal are contained in the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001 as amended. If an NQT teacher has failed to complete their induction satisfactorily, or has been granted an extension to their induction period, the regulations provide that the GTC is the responsible body for hearing such appeals. The regulations provide that the Appeals Committee may either allow the appeal, dismiss the appeal or extend the appellant's induction for such duration as it thinks fit. The Appeals Committee considers every appeal in relation to all the evidence, acting in an independent and impartial manner, being objective and favouring neither parties. The decision of the Appeals Committee is final, although appellants may seek a judicial review of their case.
42. Those teachers trained in other member states within the European Economic Area 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 GTCS registration status: Provisional Registration means that they are required to complete induction in England; full registration means that they are exempt from induction.

Amendment 1
May 2006

Amendment 1
May 2006

43. 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. 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 guidance is available at www.teachernet.gov.uk/docbank/index.cfm?id=5628

APPOINTING SUPPORT STAFF

44. The LA must appoint a person chosen by the governing body to fill a support post, unless that person does not meet the staff qualification requirements for support staff described in paragraph 46. Where the headteacher does not exercise delegated responsibility for support staff appointments, the governing body must consult the headteacher before making a recommendation, and in either case must consult the LA. The LA has an entitlement to make representations about the grade and remuneration of support staff.

CHECKING APPLICANTS

45. When the governing body (or headteacher) has chosen a teacher it wishes to be appointed, the LA must check that the person meets the staff qualification requirements. This can be done by contacting the Teachers' Qualifications (TQ) Helpdesk by emailing tqanswer@qtce.org.uk or by telephoning 0121 345 0140. These requirements are set out in [the Education \(School Teachers' Qualifications\) \(England\) Regulations 2003/1662](#), [the Education \(Specified Work and Registration\) \(England\) Regulations 2003/1663](#), and the [Education \(Induction Arrangements for School Teachers\) \(Consolidation\) \(England\) Regulations 2001](#): SI 2001/2897 (as amended). The LA must be satisfied that the candidate has the necessary health and physical and mental capacity for the post. The LA will seek the advice of its medical adviser on this. The LA must be satisfied that the candidate has the appropriate teaching qualifications, which in the case of teachers, will almost invariably include QTS.
46. Section [142\(8\) of the Education Act 2002](#) provides that an employer may not use a person who is subject to a direction under section 142 of that Act (i.e. a person who is included in List 99) to carry out work in contravention of the direction. If a teacher or a member of support staff is to provide education or have regular contact with children, the LA should also check List 99, maintained by the DfES, to ensure the person is not barred or restricted from teaching or other work to which [Section 142 of the Education Act 2002](#) applies. If the post meets the criteria for a criminal background check, employers should ask applicants to apply to the Criminal Records Bureau for a Disclosure.
47. Disclosures contain details of any convictions and cautions that a person may have, as well as details of whether they are included on List 99, the Protection of Children Act List or have been disqualified from working with children by the court. Detailed guidance on pre-employment checks, including Disclosures, is contained in *Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service* (DfES 0278/2002). Further guidance on Disclosures is contained in *Criminal Records Bureau: Managing the Demand for Disclosures* (DfES 0780/2002). If a person's Disclosure reveals information that raises doubts about the person's suitability, the governing body may want to consider this in reaching their final recruitment decision. LAs will also need to check with the GTC whether teachers are registered with the Council and whether any restrictions are in force against the teacher. Employers can check whether a teacher has a GTC restriction by contacting the Teachers' Qualifications (TQ) Helpdesk by emailing tqanswer@qtce.org.uk or by telephoning 0121 345 0140. An LA must not appoint a person who fails to meet any staff qualification requirement.

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DISCRIMINATION IN APPOINTMENTS AND DURING SERVICE

48. Applicants for posts at the school must be judged on their merits against the objective requirements for the job. It is unlawful to give one candidate a better chance than another may then have to appear before an Employment Tribunal (see paragraphs 85–86).
49. Under the [Disability Discrimination Act 1995](#) employers (governing bodies and LAs) must not discriminate against current or prospective employees with disabilities, or those who have had disabilities in the past. Governors and LAs must make reasonable changes to their employment arrangements or premises if these disadvantage a disabled employee compared to a person who is not disabled. For prospective employees, they must consider whether there is any “reasonable adjustment” which would overcome a disadvantage to a disabled applicant before deciding if they are the best person for the job. Less favourable treatment will only be justified if an adjustment to enable a disabled person to do the job is not reasonable or their disability would place pupils or staff at risk. Chapter 11 of this Guide (Equal opportunities and school governors) covers governing bodies’ responsibilities on discrimination in more detail.

PAY AND CONDITIONS OF SERVICE

50. Teachers’ pay structure is fixed by law. The pay structure includes scope for annual progression for classroom teachers (except for those who have passed the threshold, where further progression is on the basis of performance), as well as scope for discretion by governing bodies in setting the pay of classroom teachers, advanced skills teachers and the leadership group. Governing bodies must review the pay of all teachers annually with effect from 1 September. In doing so they must keep within the statutory provisions set out in the annual School Teachers’ Pay and Conditions Document. Governing bodies must have a clear pay policy discussed with staff.
51. When new appointments of support staff are made, the governing body decides on the point on the scale to which they are appointed.
52. Governing bodies should also be aware of the new [School Governance \(Contracts\) Regulations](#) which came into force on 30 June 2005. These new Regulations will apply when schools are considering entering into contracts for services and require the governing body of every maintained school to have regard to the Code of Practice on Workforce Matters in Public Sector Service Contracts, as set out in the Schedule to the new Regulations.
53. Under the Equal Pay Act 1970 women are entitled to the same pay as men if they are employed to do the same work or work that is of equal value. Governing bodies must ensure that this requirement is complied with when making decisions about pay.
54. All teachers employed by the LA are subject to statutory conditions about professional duties and working time which are set in the annual [School Teachers’ Pay and Conditions Document](#). These become part of their contracts of service. Their contracts may also include national and local agreements on conditions of service that are not set by law for such matters as sick pay or maternity leave. There may be local or national agreements relevant to the duties and working time of some support staff.

PERFORMANCE MANAGEMENT

55. [The Education \(School Government\) \(Terms of Reference\) \(England\) Regulations 2000](#) require the governing bodies of maintained schools to establish and maintain written performance management policies setting out how school teacher appraisal at the school is to be implemented. The governing body must make a copy of the performance management policy available for inspection to any school teacher employed at the school, any person involved in the inspection or operation of the appraisal system, and the school’s appointed external adviser on headteacher appraisal (see below).

The [Education \(School Teacher Appraisal\) \(England\) Regulations 2001](#) apply to:

- all teachers in mainstream schools;
- all teachers centrally employed by LAs (including teachers in nursery schools);
- teachers working at more than two schools;
- teachers with fixed-term contracts of one term or more (or 12 weeks or more if centrally employed by LAs).

The Regulations also provide that for mainstream schools, the governing body shall appoint two or three governors to be appraisers for the headteacher, and appoint an accredited external adviser to support the appointed governors in carrying out the headteacher's appraisal. However, where a school has been allocated a SIP, the SIP will from that point provide advice to the governing on headteacher appraisal.

The Regulations applying to nursery schools

56. Where a nursery school has a constituted governing body, performance management will be carried out in the same way as in mainstream schools.

The Regulations applying to secondary, primary and qualifying nursery schools

57. Headteachers' objectives should be agreed between the headteacher and the appointed governors. Objectives must include those relating to school leadership and management, and pupil progress. If no agreement is reached, the appraisers set the objectives for the headteacher. The agreed or set objectives must be recorded in a written statement. If the objectives have been set, rather than agreed, the headteacher may add written comments to the statement.
58. The appointed governors monitor progress throughout the year. At the end of the cycle the appointed governors, the headteacher and the external adviser must hold an appraisal interview to review the headteacher's performance, assess the extent to which the headteacher has met his or her objectives and identify any training and development needs and ways of meeting them. Within 10 days of the meeting, the appointed governors must produce a written appraisal statement (which they may ask the external adviser to draft), which may be used to inform decisions about the headteacher's pay. Training and development needs should be recorded on a separate annex to the statement.
59. If the headteacher has a complaint about his or her appraisal statement, it should be raised with the review officer who may be the chair of governors, if they have not taken part in the headteacher's review. If the chair of governors has taken part in the review, the governing body should appoint one or more governors who did not participate in the appraisal to act as review officer(s). The review officer may order the appraisal statement to stand, amend the statement or order a new appraisal. If the review officer orders a new review, the chair shall appoint new appraisers.
60. The governing body is under a duty to secure that the performance of all school teachers at the school are appraised in accordance with the Regulations on an annual cycle. Headteachers shall appoint appraisers for other teachers in the school. The appraiser and the teacher shall seek to agree objectives relating to developing and improving the teacher's professional practice and to pupil progress. Objectives shall be recorded in a written statement. Where objectives are not agreed, the appraiser shall record such objectives as he or she considers appropriate in writing and the teacher may add comments in writing.
61. The appraiser shall observe the teacher teaching on at least one occasion during the appraisal cycle. At or near the end of the appraisal cycle, the appraiser and the teacher shall hold an appraisal interview to review the teacher's performance, assess the extent to which the objectives have been met and identify any training and development needs. Not later than 10 school days after the appraisal interview, the appraiser shall prepare a written statement of the main points made at the interview, the conclusions reached and, in a separate annex, details of training and development needs and ways of meeting them identified at the interview.

62. Appraisal statements are confidential documents. The chair of governors holds the appraisal statement for the headteacher. All other appraisal statements are held by the headteacher. Jobholders are given a copy of their appraisal statement. The Regulations lay down who can be given copies of appraisal statements. The headteacher's appraisal statement must be made available to any review officer (who will also be given access to the statement of objectives for the appraisal cycle to which the statement relates) and on request, to the appraisers, any governors responsible for advising or taking decisions in relation to the headteacher's pay, and in certain circumstances, the Chief Education Officer (CEO) or their nominee. Where a copy is sent to the CEO or their nominee, the DfES regards it as good practice for church schools to also provide a copy to the diocesan authority.
63. The training and development annex (which is part of the full appraisal statement) for both headteachers and other teachers should be sent to the person in the school responsible for teachers' training and development.

The appraisal Regulations do not apply to certain categories of school teachers, including:

- teachers in their induction year;
- teachers employed for less than one term.

64. More detailed information for governors on the performance management arrangements can be found in the booklet *Performance Management 2003: Support Guide for Governors and Headteachers*. Further information on performance management, including guidance and a model performance management policy is available in the Management area of TeacherNet at: www.teachernet.gov.uk/performancemanagement
65. The Government has announced a refocusing of teacher, including headteacher appraisal to be introduced from September 2006. Consultation on new regulations on performance management is expected to begin shortly.
66. As part of the performance management process, governors may wish to encourage their schools to use the "Professional and Career Development" online support tool. This is an interactive tool to help teachers to map their chosen route through the profession and to support their professional learning. There is the facility for self-analysis, a framework for developing a career progression plan and an e-portfolio, which includes a CV. The tool can be accessed at www.teachernet.gov.uk/development
67. From September 2005 a Light-Touch Validation process for performance management will come into effect to help ensure that a school's performance management arrangements are robust, transparent and fair, comply with the current Regulations, and make the link between performance management and pay decisions. The Light-Touch Validation process will apply to any school, central service, or non-standard setting to which the [Education \(School Teacher Appraisal\) \(England\) Regulations 2001](#) apply. A checklist has also been developed to assist headteachers and governors to prepare for the validation process. This checklist can be found at www.teachernet.gov.uk/management/payandperformance/performancemanagement/guidance/LTV_Checklist

PERFORMANCE THRESHOLD FOR TEACHERS (2005)

68. Performance threshold assessment is part of a framework of national pay and standards, from QTS and induction right up to headship, that provides a focus for teachers' career and professional development. A review of professional standards, including the threshold standards, is currently being undertaken by the Training and Development Agency (TDA).
69. Any teacher with QTS may apply, once in any school year, to the relevant body for assessment against the performance threshold standards (set out in annex 1 of the School Teachers' Pay and Conditions Document) when, or at any time after, they have been placed on point M6 of the main pay scale.

Amendment 1
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70. The governing body has legal responsibility for the threshold process. However, it is required to delegate the receipt and assessment of applications to the headteacher (or person with management responsibility in the case of unattached teachers). That person should handle all practical aspects of the process, including the giving of feedback to threshold applicants.
71. All individuals involved in the assessment process must act fairly, and in particular, must not discriminate unlawfully on the grounds of a person's sex, sexual orientation, age, ethnic origin, religious beliefs, disability, part-time working, fixed-term contract or trade union activities. Teachers who believe that they have been discriminated against unlawfully have recourse to the pay appeals process within their school in addition to other legal rights and remedies.

DISCIPLINE, GRIEVANCE PROCEDURES AND SUSPENDING STAFF

- 71a. The governing body is responsible for setting out disciplinary rules and procedures for staff. They must also include rules and procedures for dealing with a lack of capability on the part of any member of staff. They must also have procedures for staff to follow if they have a grievance or complaint about their employment. These procedures should be made known to staff at the school. The governing body may delegate discipline and grievance procedures to one or more governors, to the headteacher or to one or more governors and the headteacher together, but they must not allow any outside body or persons to take decisions for them. Both the governing body and the headteacher have power to suspend on full pay anyone who works at the school, if it seems necessary. Each must inform the other, and the LA, if they take such action. Only the governing body may end a suspension.

LA CONCERNS ABOUT THE PERFORMANCE OF THE HEADTEACHER

72. The LA must send a written report to the chair of the governing body if they have serious concerns about the performance of the headteacher. At the same time the LA must send a copy of the report to the headteacher. The chair must notify the LA in writing of the action he or she proposes to take in the light of the report. Guidance on the making of such a report is set out in Section 8 of the statutory staffing guidance, available on GovernorNet at www.governor-net.co.uk

DISPUTES WITH STAFF: STRIKE ACTION

73. 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 carried out the correct procedures first, such as holding a secret ballot of its members, and whether the dispute is a “trade dispute” within the meaning of employment legislation. Immunity does not apply where the actions that the staff are protesting about do not affect them, for example decisions taken by the governing body of another school. However, it may apply to disputes with the LA.

RECOGNISED TRADE UNIONS

74. Recognised unions are those that are recognised by either the LA or the governing body. Governing bodies must recognise any unions that the LA recognises. If they wish they may recognise other unions.

DISMISSING STAFF

75. The normal expectation is for headteachers, where appropriate, to lead the process of making initial dismissal decisions. The governing body should delegate these matters to the headteacher unless particular circumstances apply (see Section 1 of the statutory staffing guidance, available on GovernorNet at www.governor-net.co.uk). Any appeal against an initial

dismissal decision should be before a hearing of at least three governors who have had no previous involvement. Dismissal proceedings at the school must give the person the right to explain matters before a decision is taken and to appeal before the decision is passed to the LA.

76. The LA and headteacher have the right to be present or represented at any meeting to consider a dismissal. Where the headteacher does not have delegated responsibility (or the headteacher is being considered for dismissal) the initial decision should be delegated to one or more governors. If the person works solely at the school, the LA, as employer, must give notice of dismissal, or if the circumstances justify it, terminate the contract within 14 days. If he or she also works elsewhere for the LA, the LA just has to withdraw him or her from the school.
77. The governing body must give the employee a written statement of the reasons for dismissal. It would be good practice to copy the statement to the LA as employer. An employee who thinks he or she has been unfairly dismissed can complain to an Employment Tribunal. If a governing body is in doubt about how employment law affects a particular case, it should get further advice from the LA.

Employers must report all cases to the DfES where they cease (or might have ceased) to use a person's services because he or she is considered unsuitable to work with children; or as a result of misconduct; or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person's contract is terminated or he or she leaves voluntarily. The Education (Prohibition from Teaching or Working with Children) Regulations 2003 list the information that employers are required to supply to the Secretary of State for Education and Skills as part of a report. The police will continue to report convictions and cautions incurred by teachers to the DfES (where they are aware that a person is a teacher).

REDUNDANCY

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

PREMATURE RETIREMENT AND COMPENSATION FOR REDUNDANCY

80. The governing body decides whether to grant premature retirement to teachers aged 50+ and under 60 and whether to award them added years service under the [Teachers \(Compensation for Redundancy and Premature Retirement\) Regulations 1997](#). The governing body can grant premature retirement either for reasons of redundancy, or if the employer terminates a teacher's employment, in the interests of the efficient discharge of the employer's function.
81. If the governing body grants a teacher premature retirement, the LA, as the compensating authority, will have to pay "mandatory compensation" towards that teacher's annual pension and retirement lump sum (but see paragraph 83). The amount of mandatory compensation will reflect the cost to the pension scheme of allowing a teacher to take their pension before they reach 60. The younger the teacher when he or she is granted premature retirement, the higher the amount of mandatory compensation the LA will have to pay.

82. The governing body also decides on the level of compensation to grant a member of staff they make redundant. Although under the [Employment Rights Act 1996](#) they must make a statutory compensation payment for redundancy (worked out using the number of years service and a limit on weekly earnings, which is £270 at February 2004), it is for them 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.)
83. The governing body should bear in mind that [Section 37 of the Education Act 2002](#) gives LAs the power to take the costs of premature retirements (including the cost of any added years service) from school budgets if they have not agreed to the premature retirement. Section 37(5) of the Education Act 2002 allows LAs to take the costs of discretionary compensation for redundancy from a school's budget, if they have good reason to do this. (An example of a good reason might be that the LA thought the discretionary payment in a particular case was too high in relation to their own policy.) So, it is important for the governing body to hold discussions with their LA about premature retirements and redundancy compensation they plan to give. Further information is in DfEE Circular 15/97, *Early Retirement Arrangements for Teachers*.
84. Some staff appointed some years ago may have contracts that say what payments must be made if the teacher takes early retirement. The governing body should make sure that any decision about how much the pension should be increased by takes account of these. Legal advice should be taken.

EMPLOYMENT TRIBUNALS

85. Employment Tribunals (formerly known as Industrial Tribunals) hear complaints where employers have discriminated against individuals or failed to respect their rights under employment law. Examples are:
- dismissing an employee unfairly;
 - refusing to allow a woman to return to work at a school after having a baby;
 - refusing to give trade unions information that they need for negotiations.

Tribunals can order an employee to be re-engaged or reinstated. They can award compensation.

86. If the complaint is about a decision taken by a governing body, the governing body may have to appear before an Employment Tribunal to defend its action. The governing body must inform the LA within 14 days of being notified of the Employment Tribunal application. In cases of dismissal, the LA will pay any compensation or legal costs awarded by an Employment Tribunal, unless they can show that they have good reason to charge the school. This may happen, for example if the LA had advised the governing body in the first place that an Employment Tribunal was likely to decide a dismissal was unfair. However, in law, the fact that an LA has a "no redundancy" policy is not reason enough to make the school pay. In cases other than dismissal (such as discrimination), any compensation or legal costs should be met by the school, or centrally by the LA in accordance with local arrangements. LAs may provide for this under their scheme under Section 48 of the School Standards and Framework Act 1998.

OTHER RELEVANT PARTS OF EMPLOYMENT LAW

87. There are other requirements of employment law that affect governing bodies as well as those already mentioned. The LA will be able to offer help and guidance. The main requirements for governing bodies and LAs are that:

- they must respect the rights of staff to return to work;
- they must give the representatives of recognised independent trade unions any information that would help them in negotiations with the governing body, where this would be following good industrial relations practice. An example would be providing information about the budget;
- they must not force a member of staff to join a union or take part in union activities, or prevent him or her from doing so;
- they must respect the rights of staff to return to work after leaving to have children;
- they must respect the rights of safety representatives and officials of independent recognised trade unions to take time off with pay for specified purposes;
- they must respect the rights of staff to have time off, not necessarily with pay, for other purposes, such as carrying out public duties (including duties as a governor of a maintained school or a further education college) and receiving antenatal care.

THE LAW

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

Equal Pay Act 1970

The Sex Discrimination Act 1975 – not available on the internet

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

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

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

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

[Disability Discrimination Act 1995](#)

[Employment Rights Act 1996](#)

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

[School Standards and Framework Act 1998: Section 81](#)

[Employment Relations Act 1999](#)

[School Staffing \(England\) Regulations 2003](#)

[General Teaching Council for England \(Registration of Teachers\) Regulations 2000](#)

[General Teaching Council for England \(Disciplinary Functions\) Regulations 2001](#)

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

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

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

[Education \(Modification of Enactments Relating to Employment\) Order 2003](#)

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

[School Teachers' Pay and Conditions Document 2005](#), and annual successor Documents

Education (School Government) (Terms of Reference) (England) Regulations 2000
(England) Regulations 2000

[Education \(School Teacher Appraisal\) \(England\) Regulations 2000](#)

[Education Act 2002: Section 142](#)

[Education \(Prohibition from Teaching or Working with Children\) Regulations 2003](#)

[Education \(Prohibition from Teaching or Working with Children\) \(Amendment\) Regulations 2004](#)

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

GUIDANCE

Staffing guidance under Sections 35(8) and 36(8) of the Education Act 2002,
www.governor.net.co.uk/linkAttachments/ACF3B38.doc

DfES Guidance 0278/2002, Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service,
www.teachernet.gov.uk/docbank/index.cfm?id=2172

DfES Guidance 0780/2002, Criminal Records Bureau: Managing the Demand for Disclosures, www.teachernet.gov.uk/docbank/index.cfm?id=3334
www.teachernet.gov.uk/docbank/index.cfm?id=2172

DfEE Circular 7/96 Use of Supply Teachers

DfEE Circular 3/97 What the Disability Discrimination Act (DDA) 1995 means for Schools and LAs

DfEE Circular 15/97 Early Retirement Arrangements for Teachers

DfEE Circular 4/99 Physical and Mental Fitness of Teachers and of Entrants to Teacher Training

The Induction Support Programme for Newly Qualified Teachers (DfES/0458/2003)

DfEE June 2000 – Performance Management Guide for Governors

School Teachers' Pay and Conditions of Service in England and Wales

Code of Practice on LEA/School Relations

Equal Opportunities Commission and Commission for Racial Equality: Codes of Practice on eliminating discrimination and the promoting of equality of opportunity

DfEE: Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have a disability

DfEE and Department of Social Security: Guidance on matters to be taken into account in determining questions relating to the definition of disability

Department of Trade and Industry Guides:
Industrial Action and the Law
www.dti.gov.uk

ACAS Codes of Practice:
Advisory Conciliation and Arbitration Service (ACAS)
Wilton Street
London
SW1X 7AY
Tel: 0207 388 5100
[Website: www.acas.org.uk](http://www.acas.org.uk)

Commission for Racial Equality
Elliot House
10–12 Allington Street
London
SW1E 5EH
Tel: 0207 828 7022

Equal Opportunities Commission
Overseas House
Quay Street
Manchester
M3 3HN
Tel: 0161 833 9244

General Teaching Council for England
Victoria Square House
Victoria Square
Birmingham
B2 4AJ
Tel: 0870 001 0308
Email: info@gtce.org.uk
Website: www.gtce.org.uk

10 ADMISSIONS

CHAPTER SUMMARY

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

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

LEGISLATIVE FRAMEWORK

1. The School Standards and Framework Act 1998 (also referred to here as “the 1998 Act”) introduced a new framework for school admissions which applied to admission arrangements for intakes from September 2000 onwards. An updated statutory School Admissions Code of Practice came into force on 31 January 2003 and gives guidance to Local Authorities (LAs) and other admission authorities (see paragraph 4, below) on the law, and on guiding principles for school admissions. All those involved with administering admission arrangements must have regard to the Code. A separate statutory School Admission Appeals Code of Practice came into force on 31 January 2003.
2. This section of this Guide gives only very basic information on some key aspects of admissions. It must be read in conjunction with the Admissions Code and the Appeals Code, the relevant sections of the 1998 Act (as amended by the [Education Act 2002](#)) and the associated admission Regulations listed below.

RESPONSIBILITY FOR ADMISSIONS TO SCHOOL

3. Parents of children between the ages of 5 and 16 must ensure that their children receive suitable full-time education and LAs are responsible for ensuring that parents carry out this duty. A child reaches compulsory school age at the beginning of the term following his or her fifth birthday. LAs must also ensure that there are sufficient school places for the children in their area and take steps to address any shortfalls.
4. In community and voluntary controlled schools the LA is the admission authority and is responsible for school admissions (except where the LA has delegated this responsibility to the governing body with their agreement). The governing body must, by law, implement the LA's decisions on individual applications and act in accordance with the LA's admission arrangements. If it refuses, the LA can refer the matter to the Secretary of State for Education and Skills who may direct the governing body to comply with the LA's decision under [Section 496 or Section 497 of the Education Act 1996](#). However, the governing body can appeal to an independent appeal panel where the LA has decided to admit a pupil who has been permanently excluded from two or more schools. In foundation and voluntary aided schools the governing body is the admission authority.
5. The governing body may delegate the function of determining applications for places in the school to a committee that will administer the admission process, as determined by the governing body, but not to an individual. It is considered good practice to appoint the headteacher onto an admissions committee, but headteachers cannot act in place of the governing body in determining the school's admission policy, or in deciding on the admission of any individual child.

CONSULTATION ON PROPOSED ADMISSION ARRANGEMENTS

6. Admission authorities in an area (including governing bodies of community and voluntary controlled schools with delegated responsibility for admissions) must consult each other, asking for views and comments on all aspects of their proposed admission arrangements, before determining the arrangements they intend to use. The School Admissions Code of Practice gives details of the bodies that LAs and other admission authorities must consult, and encourages consultation with Academies, although there is not a statutory duty to do so.
7. The governing body of a foundation and voluntary aided school must also consult the governing bodies of community and voluntary controlled schools in the relevant area (see below). The governing body of Church of England schools must consult their diocesan Board of Education before consulting others. All maintained school admission authorities are encouraged to establish the views of parents before determining their admission arrangements. Academies must consult locally as required by their funding agreements.
8. Local consultation should be completed by 1 March every year. After this, admission authorities must determine their admission arrangements by 15 April, notifying all those with whom they have consulted. This may be done by email. It is not sufficient for admission authorities to just put any proposed or determined arrangements on their website.
9. Consultation on proposed admission arrangements should take place within an area called “the relevant area”. The LA determines the relevant area after appropriate consultation with the other admission authorities in the area and any neighbouring LAs. There may be more than one relevant area in the LA’s area. LAs should consult on and review their relevant areas every two years. Relevant areas should reflect parents’ diverse preferences and children’s’ travel-to-school patterns.
10. If the LA has notified the Secretary of State for Education and Skills that all admission authorities in the relevant area have consulted each other in the “qualifying year” (i.e. in 2004–5 or any subsequent year), a foundation or voluntary aided school (or the governing body of a community or voluntary controlled school with delegated responsibility for admissions) is only required to consult every other year if:
 - the governing body is proposing the same admission arrangements as it had determined in the preceding year;
 - no objection has been made to the Schools Adjudicator about the admission arrangements proposed by the governing body in any of the preceding five years.

NOTIFICATION AND PUBLICATION OF INFORMATION

11. An admission authority must send written notification, within 14 days of determining its admission arrangements, to all those with whom it was required to consult. Admission authorities who determine an admission number for any school that is lower than that indicated by the new net capacity formula (set out in *Assessing the Net Capacity of Schools*’ issued by the Department for Education and Skills (DfES) in August 2002) must also publish a notice to explain this in a local newspaper. The notice must explain to parents that they have the right to object to the Schools Adjudicator about the lower admission number (see paragraph 12, below).
12. Admission authorities of schools that determine to continue with partially selective admission arrangements that have been in force since the 1997–8 school year – and that could not now lawfully be introduced – must publish a notice explaining this each year. The notice must explain to parents that they have the right to object to the Schools Adjudicator about the continuation of the school’s selective admission arrangements.

OBJECTIONS TO SCHOOL ADMISSIONS AND THE ROLE OF THE SCHOOLS ADJUDICATOR

13. The governing body of a foundation or voluntary aided school can object to the Schools Adjudicator about any aspect of the admission arrangements of other admission authorities. To be eligible to object, your authority must be within the relevant consultation area of the school that is the subject of your objection. The governing bodies of community and voluntary controlled schools can object to the admission arrangements of other schools that are their own admission authority within the relevant consultation area. They can also object to the Schools Adjudicator about the admission number determined by the LA for their school, but not to any other aspect of the LA's admission arrangements for community and voluntary controlled schools.
14. The Schools Adjudicator may also hear objections from parents relating to partially selective admission arrangements, or when an admission authority determines an admission number which is lower than the one indicated by the application of the net capacity formula. The Schools Adjudicator may only consider such objections where 10 or more parents are objecting about the same admission arrangements that raise the same or substantially the same issue.

INFORMING PARENTS: PUBLICATION OF ADMISSION ARRANGEMENTS

15. All admission authorities, including the governors of foundation and voluntary aided schools and of community and voluntary controlled schools with delegated responsibility for admissions, have a duty to publish details of the admission arrangements they have determined. LAs are under a specific duty to publish information about admission arrangements for all the maintained mainstream schools in their area – in a composite prospectus – before 1 October each year. It would also make it helpful to publish information about admission arrangements for Academies. Therefore, each appropriate governing body should provide the LA with the information required for the prospectus. LAs must publish:
 - details of arrangements for enabling parents to express a preference for a particular school or schools (with an explanation of what they and LAs or schools should be doing at each stage of the admissions process, including all relevant timescales and deadlines);
 - information on how to take up their statutory right of appeal*;
 - details of how the co-ordinated admissions scheme will work for the LA's area and neighbouring areas;
 - any other information that they consider will be of interest to parents, for example information on application numbers and patterns of successful applicants (i.e. the criteria under which they were accepted) in recent years, to help parents assess realistically their likelihood of getting a place at any preferred school.

*See paragraphs 34–36 for more information on appeals.

16. Published admission arrangements must include the oversubscription criteria that will be used to allocate places if there are more applicants than places at a particular school. Composite prospectuses should also tell parents where and how to access other sources of information, such as the annual school performance tables, as well as published reports of recent school inspections.
17. The governing body of a foundation or voluntary aided school (or a community or voluntary controlled school with delegated responsibility for admissions) must publish information about the school's admission and appeal arrangements and should also consider publishing other information of interest to parents. Information for parents should be clear, easy to understand and in an accessible format, including electronically (i.e. on the school's

website). It will be the role of the Admissions Forum to consider the comprehensiveness and accessibility of all the published admissions literature and information for parents.

VARIATION TO DETERMINED ADMISSION ARRANGEMENTS

18. Section 89 of the 1998 Act, and its implementing Regulations, allow for the variation of admission arrangements once they have been determined, if there has been a significant change of circumstances. The School Admissions Code of Practice provides examples of what these might be and details of what admission authorities should do if they then want to vary their admission arrangements. This will involve referring the proposed variations to the Schools Adjudicator and notifying all the bodies that were, or should have been, consulted before the arrangements were determined. A simple misprint in the published admission arrangements may not require a request to the Schools Adjudicator for a variation.
19. Admission authorities should consider variations to admissions arrangements very carefully before referring them to the Schools Adjudicator, and should not do so once parents have been asked to express their preferences for particular schools, unless a major change in circumstances makes this necessary. In addition, an admission authority may vary its admission number, irrespective of whether such a variation constitutes a major change, where such a variation is necessary to implement proposals published under Section 28 of the 1998 Act. However, where the School Organisation Committee proposes to modify the admission number stated in the proposal, the variation must be referred to the Schools Adjudicator under Section 89(5).

REVISION OF DETERMINED ADMISSION ARRANGEMENTS

20. Section 90 of the 1998 Act allows a “relevant admission authority” (as described in Regulations) to revise its admission arrangements if it believes it needs to do this because of a decision by the Schools Adjudicator or the Secretary of State for Education and Skills to uphold an objection to another admission authority’s admission arrangements. If an admission authority needs to revise its arrangements in these circumstances, it must do so within two months of the decision being made. It must also notify each of the admission authorities with which it was required to consult of the revised arrangements it wants to use.

PARENTAL PREFERENCE

21. LAs have a specific duty to make arrangements enabling parents to express a preference as to the school at which they would like their child to be educated and to give reasons for that preference. LAs and the governing bodies of all schools must comply with an expressed preference unless certain specified circumstances apply. In most cases, preferences are refused because the school is full, but admission authorities of selective schools can refuse to comply if their specific selective criteria are not met.
22. Other specified circumstances where LAs and governing bodies can refuse to comply with an expressed preference are:
 - where another place has been offered, as identified under co-ordinated admission arrangements;
 - where to admit would be incompatible with the duty to meet infant class size limits;
 - where the child has been permanently excluded from two or more schools, and where at least one of the exclusions took place after 1 September 1997, and at least one of the exclusions took place within the preceding two years.

N.B. from the 2004–5 school year onwards, if the expressed preference is for a school which has a religious character, the admission authority may no longer refuse to comply if there are places available at the school simply because the parent does not meet their denominational criteria.

CO-ORDINATED ADMISSION SCHEMES

23. The [2002 Act](#) introduced a statutory requirement for every LA to draw up a scheme to co-ordinate admissions to every mainstream maintained school within their area. The Regulations and the School Admissions Code of Practice provide details on these schemes.
24. Under secondary co-ordination, parents send in one application form to the LA in which they are resident, naming their preferred schools, and subsequently they will receive one offer of a place on a single day. For secondary admissions, co-ordination is required from September 2005 intakes. Primary co-ordination is required from 2006 intakes. Under primary co-ordination, parents apply on the application form of the LA in which the school is situated. LAs draw up schemes in consultation with all other local admission authorities in their area. Voluntary aided and foundation schools, together with community and voluntary controlled schools with delegated authority for admissions, still determine and apply their own admission arrangements, including oversubscription criteria, but give their LA lists of which children they can accept in which order, so that the LA can eliminate multiple offers in accordance with the agreed scheme.

Timetable for (secondary school) consultation and co-ordination (for 2006 onwards)

Latest date	Action
1 January 2005 (and subsequent years)	LA formulates a co-ordinated scheme and refers it to the Admissions Forum
Between 1 January and 15 April each year	LA consults governing bodies and agrees co-ordinated scheme
15 April each year	LA informs Secretary of State for Education and Skills of scheme and provides copy
1 March each year	All admission authorities complete consultation on proposed admission arrangements for individual schools (should allow at least one month)
15 April each year	Admission authorities determine admission arrangements
Within 14 days of determination date	Admission authorities notify details of determined admission arrangements to LAs and admission authorities who were consulted
Closing date required by LA	Each governing body provides information to the LA for composite prospectus entry
No later than six weeks before date by when parents may express a preference	LA publishes composite prospectus
Date decided locally (model scheme in Code of Practice suggests 24 October)	Parents express their preferences for schools (possibly to more than one LA)
Date specified in scheme	LAs pass applications to foundation/voluntary aided schools
Date specified in scheme	Foundation and voluntary aided schools pass their lists of pupils to be offered places to LAs
Date decided locally (model scheme in Code of Practice suggests 15 February)	LAs apply agreed scheme for own schools and inform other LAs of offers to be made to their residents
Date specified in scheme	Schools told by own (home) LA of final result including any offers to pupils in other LAs
1 March	Home LA offers places at secondary schools to parents
Date decided locally (the admission authority will publish a deadline, which should not be less than 10 working days from the date parents were notified their application was unsuccessful)	Parents make their appeals (where relevant)

N.B. Please see chapter 6 of the School Admissions Code of Practice for further information on co-ordinated admission arrangements.

ADMISSIONS FORUMS

25. All LAs must now have an Admissions Forum. Members of the Forum include the LA; headteacher or governor representatives of community; voluntary controlled, foundation and voluntary aided schools; representatives from parent governors; Academies; the Churches; City Technology Colleges, if nominated; and others who represent the interests of any section of the local community.
26. Forums provide a vehicle for admission authorities and other key interested parties to get together to discuss the effectiveness of local admission arrangements, seek agreements on how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Their tasks include considering existing and proposed admission arrangements and how well they serve the interests of local parents

and children. They should also review the comprehensiveness and accessibility of guidance for parents.

27. Forums are also responsible for seeking to promote agreements on arrangements for dealing with a range of difficult issues, including how to ensure that potentially vulnerable children, or those arriving outside the normal admission round are effectively provided for in admission arrangements. Forums are required to circulate advice that represents their agreed views and admission authorities are required to have regard to that advice.

LOOKED AFTER CHILDREN

- 27a. Regulations, that came into force in February 2006, require admission authorities to give first priority to Looked After Children (LAC) in their oversubscription criteria for admissions to school from 2007 onwards. There are some permitted exceptions to this:

- faith schools are required to give **first** priority to LAC's of their faith, ahead of other applicants of their faith, then LAC's not of their faith ahead of others not of their faith. However this is a minimum requirement and faith schools may choose to give first priority to all LAC's regardless of faith over other applicants.
- Designated grammar schools must give **first** priority to LAC's who meet the academic requirements.
- Schools with pre-existing arrangements for partial selection must give **first** priority to LAC's who meet the ability or aptitude criteria before other children who have been selected on that basis. LAC's who have not been allocated a place on the basis of their ability or aptitude must have higher priority than all other such children.
- Schools which select by pupil banding must give **first** priority to LAC's
- within each band over other children eligible for a place in that band.

INFANT CLASS SIZES

28. Since September 2001, subject to certain limited exceptions, infant classes of 5- to 7-year-olds may not contain more than 30 pupils with a single qualified teacher. There are therefore special arrangements regarding admission appeals where the admission authority has refused to admit a child on the grounds that to do so would cause "class size prejudice". Class size prejudice arises where, if the child were admitted to the school, the admission authority could only comply with the infant class size legislation by taking qualifying measures i.e. building an extra classroom and/or employing an additional teacher. In such cases an appeal panel must offer a place to a child only where it is satisfied either that:
- the decision to refuse admission was not one which a reasonable admission authority would make in the circumstances of the case ("Ground A"); or
 - the child would have been offered a place if the admission arrangements had been properly implemented ("Ground B").

More detailed guidance is set out in the Admission Appeals Code of Practice (see paragraph 4.53 to 4.60).

ADMISSION NUMBERS

29. The [Education Act 2002](#) removed the need for schools to define their capacity by means of "standard numbers" that could only be changed by publishing statutory proposals. Instead, admission authorities will rely on a published admission number determined following local consultation.
30. A school must have an admission number for each "relevant" age group. A relevant age group is defined in law as "an age group in which pupils are or will normally be admitted to the school in question". It may be necessary for some schools to have more than one admission number. For example, where a secondary school operates a sixth form and admits other pupils from other schools at age 16, an admission number will be required for Year 12 as well as for the main year or years in which children join the lower school.

Admission numbers must refer in each case to pupils to be admitted to the school for the first time. They should not include pupils transferring from earlier age groups. The one exception is in the case of a primary school making nursery provision, where the admission number will be the number of all children to be admitted to the Reception Year, including children who have attended the nursery.

31. Admission numbers should be set with regard to the capacity assessment for the school. The capacity of the school is the number of pupil places available. This is calculated by the “net capacity assessment formula”.
32. An admission authority can determine an admission number for a relevant age group lower than that indicated by the capacity formula, but if they do so, they must publish this information for parents who may object to the admission number. Admission authorities can also set a higher admission number than that indicated by the capacity assessment. However, in relation to admission numbers applicable to infant classes, the admission number must be compatible with the duty to comply with the infant class size legislation.
33. Admission authorities are required to consult before setting a published admission number. Pupils should not be admitted above the published number unless exceptional circumstances apply.

ADMISSION APPEALS

34. Admission authorities are required to establish appeal panels: parents can appeal to such a panel against refusal of admission to a school or refusal of entry to sixth form (this applies both to those transferring from within the school and to external candidates). In the case of foundation and voluntary aided schools this duty falls on the governing body as the admission authority. For community and voluntary controlled schools it is the responsibility of the LA even where the governing body has delegated responsibility for admissions. Where a panel finds in favour of the parent the decision is binding on the admission authority. Where the admission authority is the LA it is also binding on the governing body of the school concerned. Although the governors of foundation and voluntary aided schools are responsible for establishing admission appeal panels, the panel membership is independent from the school's governing body that made the original decision, as well as from the LA which maintains the school.
35. The [Admission Appeals Arrangements Regulations](#) specify how panels should be constituted and set out an admission authority's duty to advertise for lay members at least every three years. The governors of foundation and voluntary aided schools can make joint appeal arrangements with their LA and with other such schools. Recruitment and training of appeal panel members is the responsibility of the admission authority. Details of appeal arrangements are set out in the School Admission Appeals Code of Practice.
36. Governing bodies of community and voluntary controlled schools have the right of appeal against an LA decision to admit a child to their school who has been twice permanently excluded in a two-year period beginning on the date on which the latest of these exclusions took place. Further guidance on these appeals is contained in chapter 5 of the Appeals Code.

WAITING LISTS

37. There is no statutory obligation to keep a waiting list, but where one is operated, any places which become available must be offered in line with the school's published admission arrangements. If new applicants have a higher priority under the oversubscription criteria, they should be ranked higher than those who have been on the list for some time. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

PARTIAL SELECTION

38. The 1998 Act prevents the introduction of new academic selection except in the limited circumstances of sixth forms and to introduce fair banding arrangements. Existing partial selection on the basis of academic ability can continue provided it was in place at the beginning of the 1997–8 school year. New partial selection on the grounds of aptitude is permitted in limited circumstances and where the school has an agreed specialism.

NURSERY ADMISSIONS

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

THE LAW

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

The provisions concerning admission arrangements can be found in Sections 84–98 of the [School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#) and in the following Regulations:

The Education (Admission of Looked After Children) (England) Regulations 2006: SI 2006/128

[The Education \(Admission Forums\) \(England\) Regulations 2002](#): SI 2002/2900

[The Education \(Admissions Appeals Arrangements\) \(England\) Regulations 2002](#): SI 2002/2899

[The Education \(Co-ordination of Admission Arrangements\) \(Primary Schools\) \(England\) Regulations 2002](#): SI 2002/2903 (as amended by the [Education \(Co-ordination of Admission Arrangements\) \(Primary Schools\) \(England\) \(Amendment\) Regulations 2003](#): SI 2003/2751, the [Education \(Co-ordination of Admission Arrangements\) \(Primary Schools\) \(England\) \(Amendment\) Regulations 2004](#): SI 2004/1515 and by the [Education \(Co-ordination of Admission Arrangements\) \(Primary Schools\) \(England\) \(Amendment\) Regulations 2005](#): SI 2005/2)

[The Education \(Co-ordination of Admission Arrangements\) \(Secondary Schools\) \(England\) Regulations 2002](#): SI 2002/2904 (as amended by the [Education \(Co-ordination of Admission Arrangements\) \(Secondary Schools\) \(England\) \(Amendment\) Regulations 2004](#): SI 2004/1516)

[The Education \(Determination of Admission Arrangements\) \(Amendment\) \(England\) Regulations 2002](#): SI 2002/2896

[The Education \(Objection to Admission Arrangements\) Regulations 1999](#): SI 1999/125 (as amended by the [Education \(Objection to Admission Arrangements\) \(Amendment\) \(England\) Regulations 2002](#): SI 2002/2901)

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

[The Education \(School Information\) \(England\) Regulations 2002: SI 2002/2897](#)

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

[The Education \(Variation of Admission Arrangements\) \(England\) Regulations 2002: SI 2002/2898](#)

These are available on the OPSI website at www.opsi.gov.uk/si/si200229.htm

Key documents providing more detailed guidance on admission arrangements include:
School Admissions Code of Practice

School Admission Appeals Code of Practice

Both these documents can be accessed through the DfES website at
www.dfes.gov.uk/sacode

Copies of both Codes are available from the DfES's publications centre:

DfES Publications
PO Box 5050
Sherwood Park
Annesley
Nottingham NG15 0DJ Tel:
0845 602 2260
Fax: 0845 603 3360
Textphone: 0845 605 5560
Email: dfes@prolog.uk.com

Please quote reference DfES/0031/2003 when ordering the School Admissions Code of Practice and DfES/0030/2003 for the School Admission Appeals Code of Practice.

GUIDANCE

Free training packs for appeal panel members is available from: ISCG
Avondale Park School
Sirdar Road
London W11 4EE

11 EQUAL OPPORTUNITIES AND SCHOOL GOVERNORS

CHAPTER SUMMARY

This chapter explains the governing body's responsibility to provide equal opportunities to pupils and employees. It explains the types of discrimination and when it can occur. There is also information on the requirements on governing bodies to adhere to legislation which prohibits discrimination on the grounds of a person's sex, race, disability, sexual orientation, their religion or belief or their age.

Amendment 1
May 2006

There are several equality enactments that will come into force during the coming year. From October 2006 these will prohibit discrimination on grounds of age in relation to employment and vocational training, and will extend protection against discrimination on grounds of religion or belief and sexual orientation to pupils in schools. Detailed guidance will be made available for schools. It would be good practice for governing bodies to ensure that schools are acting in line with these provisions without waiting for the formal implementation dates. New specific duties on schools to promote equality in relation to disability and gender will also be coming into effect see paragraph 4a. below.

Amendment 1
May 2006

Schools will also need to act in accordance with the European Convention on Human Rights (ECHR). The Human Rights Act 1998 makes ECHR rights enforceable in UK courts. It is unlawful for a public authority, which will include schools, to act in a way which is incompatible with a Convention right (s6 HRA). One of the Convention rights (Article 14) relates to non-discrimination, but this is a qualified right and can only arise if another Convention right is engaged. Even if such a right is breached the authority may be able to justify a particular act.

Amendment 1
May 2006

GENERAL

1. The governing body of a school must not discriminate against:

- a child seeking admission to the school;
- existing pupils;
- job applicants;
- existing members of staff;

It must not discriminate either directly or indirectly on the grounds of :

- sex;
- race;
- disability;
- sexual orientation;
- religion or belief;
- age (in relation to employment).

Amendment 1
May 2006

2. Direct discrimination is always unlawful: it is when a person is treated less favourably than others in the same circumstances because of a specified characteristic such as their sex, race or sexual orientation.
3. Indirect discrimination may or may not be unlawful. It is defined slightly differently in different enactments, but in essence it occurs when a condition or requirement is applied equally as between people of different groups (for example male and females, or people of different races), but has a different impact on the different groups and so disadvantages some people. (For example a requirement that applicants for a job must be at

Amendment 1
May 2006

least six feet in height would be harder for women than men to comply with, and could also disadvantage members of some ethnic groups. A requirement to work full time could disadvantage women because they are more likely than men to have caring responsibilities). Indirect discrimination is unlawful unless the person imposing the condition can show that it is justified irrespective of the sex, race or other relevant characteristic of the person to whom it is applied.

4. In relation to complaints in the employment context, the Local Authority (LA) or the governing body (whichever is treated as the employer for the purposes of the Acts) may be legally responsible for discriminatory acts against employees or applicants for jobs – Including acts carried out by the headteacher or other members of staff. Employment related cases are dealt with by Employment Tribunals. Discrimination complaints involving issues such as the admission of, or equal opportunities for, pupils are dealt with by the County Courts.

Disability discrimination works in slightly different ways from other strands of discrimination legislation – for example, it is not unlawful to discriminate in favour of disabled people, and employers are required to make “reasonable adjustments” to deal with particular problems facing disabled applications and staff. Paragraph 12 deals in more detail with disability legislation as it applies to schools.

SPECIFIC DUTIES TO PROMOTE EQUALITY

- 4a. Since 2001 public authorities have been under a general legal duty to promote race equality and specified bodies including schools must also comply with a specific duty laid down in race relations legislations. That is described in detail below.

Under new legislation which introduces a specific duty in respect of disability, secondary schools will need to publish a disability equality scheme by 4 December 2006 and primary and special schools will need to do so from 3 December 2007. From April 2007 a duty to promote gender equality is expected to come into force. Detailed guidance on the disability and gender duties will be provided for schools. It is hoped that the necessary monitoring and reporting can be done as part of existing work in schools – the aim of the new duties is to achieve greater equality rather than to impose bureaucratic burdens on schools.

- 4b. Much of UK legislation, as regards equal opportunity in the employment and vocational training field, reflects European Union Law (EU Law). In addition therefore to UK legislation employees in the public sector may, in certain circumstances, rely directly on EU law. Normally however, EU rights, such as a right to equal pay, equal treatment and non-discrimination on certain grounds, is enforced in the UK through our own national legislation which has been created to reflect EU law.

SEX AND RACE DISCRIMINATION

Race Relations (Amendment) Act 2000

5. The [Race Relations \(Amendment\) Act 2000](#) which amended the Race Relations Act 1976, requires schools and LEAs, from April 2001, to have “due regard to the need to eliminate unlawful racial discrimination, to promote equality of opportunity and to promote good relations between persons of different racial groups”.
6. In order to help schools meet this general duty, they will be expected to comply with specific duties, which focus on methods that will help identify and address racial discrimination, and promote racial equality and good race relations.

Amendment 1
May 2006

Amendment 1
May 2006

Amendment 1
May 2006

Amendment 1
May 2006

These specific duties are:

- to have a written race equality policy, which should identify the action to be taken to tackle racial discrimination, and to promote racial equality and good race relations across all areas of school activity;
 - to assess the impact of all policies (including the race equality policy) on pupils, staff and parents of different racial groups, including, in particular, the impact on attainment levels of pupils;
 - to monitor the impact of all policies (including the race equality policy) on pupils, staff and parents, including, in particular, the impact on the attainment levels of pupils from different racial groups;
 - to take such steps as are reasonably practical to publish annually the results of the monitoring.
7. It is the governing body of a school that is responsible for drawing up the race equality policy and keeping it up to date. A school's race equality policy can be combined with another policy, such as an equal opportunities or diversity policy, but in order to comply with the law, the race equality policy should be clearly identifiable and easily available. For example, a governing body might decide to make a school's race equality policy a separate section, or series of sections, within an overall equality policy.
 8. A good policy would be part of the school's development plan and deal with the main areas that are relevant to promoting the general duty. Thus, a good race equality policy might deal, among other things, with:
 - pupils' attainment and progress
 - curriculum teaching and learning
 - pupil behaviour
 - discipline and exclusions
 - racial harassment and bullying
 - the school's values.
 9. Schools should draw on existing data sets to assess and monitor the impact of their policies, for example data from the annual School Census, the pupil achievement tracker and LA data on exclusions and absence.
 10. Ofsted will inspect and report on whether or not schools are meeting the general duty and the specific duties. Ofsted will also look at incidents of bullying, and in connection with racist bullying, governors should note that following the publication of the Macpherson Report of the Stephen Lawrence Inquiry, they are also required to record all racist incidents that take place in the school, and report them to their LA at least annually. Each LA determines its own procedures for recording, reporting and following-up racist incidents. Detailed guidance on dealing with racist bullying in schools was published in March 2006 and is available on the DFES website (www.teachernet.gov.uk/racistbullying).
 11. The Commission for Racial Equality (CRE) has written a Code of Practice that provides practical guidance to public bodies, including schools and LAs, on how to fulfil the general and specific duties to promote race equality (Code of Practice on the Duty to Promote Race Equality). It has also produced a non-statutory guide to the Code called *The Duty to Promote Race Equality: A guide for schools*. The CRE also has powers to enforce the specific duties by issuing a compliance notice to order the school to meet the specific duties within a certain timescale.

DISABILITY DISCRIMINATION

12. Under the [Disability Discrimination Act \(DDA\) 1995](#)

- Employers [Part 2 of the DDA](#) including LAs and governing bodies must not unlawfully discriminate against disabled people applying for jobs, or against existing disabled staff. For these purposes, a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (people who have had disabilities are also protected). The definition is wide and can cover people with hidden impairments, or even conditions where the effects are significantly reduced by medication or other treatments, for example diabetes. It is unlawful discrimination for an employer to treat a person less favourably than others for a reason to do with his or her disability unless the treatment can be justified by the employer. On 1 October 2004, Regulations that implement a European Directive amended the DDA 1995. These Regulations mean that justification for less favourable treatment can only be for a substantial (i.e. one likely to be more than trivial or minor) and material reason.
- The DDA 1995 also imposes a duty on employers to make “reasonable adjustments” if the premises or employment arrangements substantially disadvantage a disabled person compared with a non-disabled person. Examples of adjustments might include:
 - i) the installation of a ramp for an employee who uses a wheelchair;
 - ii) meetings held in a ground-floor room rather than on the first floor;
 - iii) staff notices in large print, Braille, or on audiotape for someone with a visual impairment.

Whether or not a particular adjustment is “reasonable” depends on a number of factors, such as cost, practicability and effectiveness. Failure to discharge this duty will also constitute unlawful discrimination, and since 1 October 2004, there is no justification available for failure to make a reasonable adjustment. But clearly there is no duty to make an “unreasonable adjustment”.
- Since 1 October 2004, there is also a prohibition against “direct discrimination”. Direct discrimination means treating someone less favourably on the grounds of his or her disability. In general, this means that the disabled person would not have received that treatment “but for” his or her disability. However, the disability does not have to be the only (or even the main) cause of the treatment complained of (provided it is an effective cause determined objectively from all the circumstances). There is no justification defence for direct disability-related discrimination.
- In general, the DDA ([Part 3 of the DDA](#)) 1995 also makes it unlawful for any service provider to discriminate against a disabled person by:
 - i) refusing to provide (or deliberately not providing) any service it provides to members of the public;
 - ii) the standard of service it provides or the manner in which it provides it;
 - iii) the terms on which it provided the service.
- The same prohibition applies with respect to providers of goods and facilities. Non-educational services provided by schools to the public will be caught under these duties.
- Since 1 October 1999, providers of services have had to make reasonable adjustments for disabled people such as providing extra help or making changes to the way they provide their services. Since 1 October 2004, service providers have had to make reasonable adjustments in relation to the physical features of their premises to overcome physical barriers that make it impossible or unreasonably difficult for a disabled person to access their services. However, the DDA recognises the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, service providers are required only to make adjustments that are reasonable given all the circumstances.

- Since September 2002, the Act [Part 4 of the DDA](#) has prohibited unlawful discrimination by schools against either current or prospective disabled pupils in their access to education, and in the provision of education or associated services provided by schools to their pupils. Schools are required to make reasonable adjustments to make sure that disabled pupils are not placed at a substantial disadvantage. This not only includes making reasonable adjustments for individual pupils, but also to whole-school policies, such as school trips. For schools the reasonable adjustments duty under Part 4 does not include the provision of auxiliary aids and services as they are provided by the special educational needs (SEN) framework, and over time through the planning duties (see below) by the installation of loops systems, ramps, handrails, specialist furniture etc.
 - Schools and LAs also have relatively new duties (known as the planning duties) under the DDA to plan to increase over time the accessibility of schools to disabled pupils. Plans and strategies must have been in writing and in place by April 2003 covering a period of three years, from 1 April 2003 to 31 March 2006, and thereafter on a three-year rolling basis. The nature and the content of schools' plans will depend on their disabled pupil population; their prospective disabled pupils; the size of the school; the resources available to them and the strategic steer given by the LA.
 - Schools and LAs are required to plan for:
 - i) increasing access for disabled pupils to the school curriculum
 - ii) improving access to the physical environment of the schools
 - iii) improving the delivery of written information to disabled pupils.
 The role that governors might play in the development and implementation of the accessibility plan for their individual school will vary from school to school. For example, a school might set up or use an existing planning group which could include the governor with designated responsibility for SEN.
 - Ofsted will monitor schools' accessibility plans and the Secretary of State for Education and Skills can intervene if a school is not complying with the planning duty. Schools might find it helpful to extend their local complaints procedure to cover their accessibility plans. Schools should make best use of available expertise. Disabled pupils, their parents, specialist teachers, local voluntary organisations and others can all help to identify practices and arrangements that act as a barrier to including disabled pupils. LAs also provide helpful advice and information. Governors, with their links to the community, are well placed to enlist the support of people who might be able to help the school draw up and implement its plan.
 - Guidance is provided in *Accessible Schools: Planning to increase access to schools for disabled pupils*. Copies of the guidance are available free of charge from DfES publications (tel: 0845 602 2260) and the Department for Education and Skills's (DfES's) website at www.dfes.gov.uk/sen
 - The new "public authority" duties, introduced in the Disability Discrimination Act 2005 mean that schools cannot unlawfully discriminate against disabled persons with respect to carrying out any of their functions. They will also be placed under a general duty to have regard to the need to promote equality of opportunity for disabled persons and eliminate unlawful discrimination.
13. The Disability Rights Commission (DRC) can provide information and advice to both schools and parents relating to claims of alleged discrimination. It also provides an independent conciliation service for disputes arising from schools' duties.
14. Claims of disability discrimination are heard by:
- the Special Educational Needs and Disability Tribunal (SENDIST) in relation to most educational claims;

- admission appeal panels and independent appeal panels in relation to admissions and exclusions decisions respectively;
- an Employment Tribunal in relation to employment matters;
- the County Court in relation to the provision of goods, facilities and services.

DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND RELIGION OR BELIEF

15. Governing bodies should be aware of the 2003 Regulations covering discrimination on grounds of sexual orientation and on grounds of religion or belief, which apply in the fields of employment and vocational training. These Regulations apply to all facets of employment including recruitment; terms and conditions; promotions; transfers; dismissals; training and all employment practices such as dress codes and disciplinary procedures. They make it unlawful to:

- discriminate directly or indirectly against anyone because of their actual or perceived sexual orientation, religion or belief, or because they are friends with, or associate with, someone of a particular sexual orientation, religion or belief;
- subject someone to harassment because of their actual or perceived sexual orientation, religion or belief, or because they are friends with, or associate with, someone of a particular sexual orientation, religion or belief;
- discriminate against someone for failing to follow an instruction that is discriminatory on sexual orientation, religion or belief grounds;
- victimise someone because they have made, or intend to make a complaint or allegation, or have given or intend to give evidence in relation to a complaint of discrimination on grounds of sexual orientation, religion or belief;
- discriminate against someone, in certain circumstances, after the working relationship has ended on the grounds of sexual orientation, religion or belief.

N.B. The meaning of vocational training is interpreted narrowly, so it may cover, for example, an adult who is doing training within the school, but does not cover the vocational elements of pupils' education that is provided by the school.

16. The Advisory, Conciliation and Arbitration Service (ACAS) is one of the organisations that offers advice on complying with these and other anti-discrimination Regulations (see www.acas.org.uk/a_z/discrimination.html). As it points out, where effective systems are in place to ensure an organisation's staff are treated fairly and with consideration, it is likely to encounter few problems in complying with these Regulations and other anti-discrimination legislation.

Sex and Race Discrimination

17. The governing body must not discriminate on grounds of sex or race against a child seeking admission to the school. However, the Sex Discrimination Act (SDA) 1985 does permit single-sex schools to remain single sex.

18. The governing body must not discriminate against a child on grounds of sex or race in:

- providing teaching or allocating him or her to particular types of classes (for example insisting that girls at a mixed school study a second modern language while boys take business studies);
- applying standards of behaviour, dress and appearance (although different but comparable rules for boys and girls as regards dress or appearance are not necessarily unlawful);
- excluding pupils or subjecting them to other types of detriment (for example detention);

- giving pupils careers guidance and work experience;
- conferring access to other benefits, facilities or services.

LAs and school governing bodies have a general duty to ensure that facilities for education provided by them, and any ancillary benefits or services, are provided without sex or race discrimination.

19. Whilst there is no express exemption in the same way that there is for same-sex schools, it may not be unlawful to have some single-sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes. So, for example it would be unlawful to provide remedial classes just for boys who needed help with reading without doing the same for girls in a similar position.
20. Complaints about sex discrimination against pupils will generally be taken up first with the headteacher. They may then be referred to the governing body and/or the LA. If the school or LA cannot sort out the problem, a complaint may be made to the Secretary of State for Education and Skills, who has power to give directions where he or she is satisfied that the governing body or LA has failed to comply with their duties under the Sex Discrimination Act, or that they have acted unreasonably in the exercise of their functions under the Sex Discrimination Act or the Education Acts.
21. A complaint may also be taken to the County Courts. However, in relation to sex discrimination claims, this can only take place once two months have passed after the Secretary of State for Education and Skills has been notified of the case. The Equal Opportunities Commission and the CRE have power to grant legal or other assistance with individual court cases.

Religion or Belief and Sexual Orientation

- 21a From October 2006 it will also be unlawful to discriminate against a pupil or potential pupil on the grounds of their religion or belief or sexual orientation (or that of a person they are associated with, such as a parent or guardian). There are some exceptions, for example in relation to religious discrimination in admission by faith schools. Detailed guidance will be made available to schools before these provisions come into effect.

STAFF

22. 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 or disability. Discrimination against transgendered people is also unlawful under the Sex Discrimination Act.

From 2006 the governing body must not discriminate against an applicant for a post, or an existing member or staff on grounds of age. Unlike other disability strands, however, direct age discrimination will not be unlawful if it can be shown to be objectively justified.

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.

23. There are specific legal provisions which recognise that there may be some narrow circumstances where employers will be allowed a defence to a claim of less favourable treatment on a particular “discrimination” ground. These are based on an employer having a genuine occupational reason (“GOR”) for taking it into account. The burden of establishing a GOR defence rests with the employer. In the main it will only apply in respect of treatment linked to recruitment and refusing someone a post or training and in some circumstances to dismissal from a post.

i) Discrimination against a man or woman is permitted in cases where a person’s sex is a genuine occupational qualification for the job (as strictly defined by Section 7 of the Sex Discrimination Act 1975 (SDA)). This would apply for instance where a job had to be held by a man and not a woman (or visa/versa) in order to preserve a decency or privacy, for example where the job must involve the individual visiting changing rooms whilst they are in use.

ii) An exception for genuine occupational requirement is also available in relation to race (again, strictly defined in Section 5 of the Race Relation Act 1976 (RRA)) and in relation to discrimination on grounds of sexual orientation and religion or belief. (See the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003).

iii) Section 58-60 of the School Standards and Framework Act 1998 makes specific provision for schools with a religious character in respect of the employment of teachers of the same faith as the character of the school. These provisions are expressly preserved under the Employment Equality (Religion or Belief) Regulations 2003: SI2003/1660.

iv) None of these provisions protect schools who discriminate against, harass or victimize staff because of their actual or perceived sexual orientation and who then seek to rely on a claim that it is a requirement of their religion that they do so.

v) From 1st October 2006 a new prohibited discrimination ground applies in relation to employment and vocational training when the Employment Equality (Age Discrimination) Regulations 2006 come into force. This ground will differ slightly from other grounds as direct age discrimination is capable of objective justification (See reg 3 of the 2006 regulations).

vi) However Regulation 8 of the new regulations will also deal with GOR situations and allows an employer, when recruiting for a post, to treat job applications differently on grounds of their age if possessing a characteristic related to age 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.

vii) Schools should bear in mind that a GOR must be what its says, genuine. A preference, however strongly held, for someone of a particular sex, sexual orientation, race or age to take up a job is not of itself a genuine occupational reason why someone of that particular sex, sexual orientation, race or age must fill the post and it will not in those circumstances be sufficient to raise GOR as a defence to a claim of discrimination. Schools should note that domestic law is supplemented and sometimes superseded by European law, either European Community Law or by ECHR rights.

SPORT

24. Although the SDA forbids discrimination as regards access to benefits, facilities and services (for example school gyms in mixed-sex schools), Section 44 of the Act contains an exception which permits single-sex sports. It applies to any sport or game, or other activity of a competitive nature where physical strength, stamina or physique of the average woman (or girl) would put her at a disadvantage in competition with the average man (or boy). But while this exception might permit a mixed school to have a boys-only football team, the school would still have to allow girls equal opportunities to participate in comparable sporting activities.

25. Sport and leisure facilities can also be confined to one sex (under Section 35 of the SDA) if it can be demonstrated that the facilities or services are such that users of one sex are likely to suffer serious embarrassment at the presence of the opposite sex. This also applies where the facilities or services are such that a user is likely to be in a state of undress and might reasonably object to the presence of a user of the opposite sex. In the context of schools, this exception applies only in relation to the use of facilities outside school hours, otherwise than in connection with the provision of education, for example the opening of a school swimming pool or other sports facilities to members of the public during school holidays.

WHO IS THE EMPLOYER?

26. Where the school is a community school or a community special school the LA is the employer of all staff.
27. 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.
28. 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](#): SI 2003/1964 at www.legislation.hms.gov.uk/si/si2003/20031964.htm

THE LAW

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

Human Rights Act 1998
Civil Partnership Act 2004
Gender Recognition Act 2004
The Race Relations Act 1976

[The Race Relations Amendment Act 2000](#)

[The Disability Discrimination Act 1995](#)

[The Disability Discrimination Act \(Amendment\) Regulations 2003](#)

The Disability Discrimination Act 2005

The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005

The Special Educational Needs and Disability Act (SENDA) 2001

The Sex Discrimination Act 1995

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

[The Disability \(Pensions\) Regulations 2003](#)

[The Disability Rights Commission Act 1999](#)

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

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11: EQUAL OPPORTUNITIES AND SCHOOL GOVERNORS

The Employment Equality (Age) Regulations 2006:

The Employment Equality (Sex Discrimination) Regulations 2005

[The Employment Equality \(Religion or Belief\) Regulations 2003](#): SI 2003/1660

[The Employment Equality \(Sexual Orientation\) Regulations 2003](#): SI 2003/1661

The Equality Act 2006

GUIDANCE

The Codes of Practice issued by the Disability Rights Commission, Equal Opportunities Commission and the Commission for Racial Equality that are referred to in this chapter are all statutory Codes of Practice. Whilst the Codes do not in themselves impose legal obligations, they will be admissible as evidence in any proceedings brought under the relevant Acts. If any provision of a Code appears to the Court/Tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. The Codes are not an authoritative statement of the law, but following the guidance in a Code may help to avoid adverse judgement in any proceedings.

Disability discrimination

Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability (ISBN: 0–11–270954–0, Stationery Office £9.95)

Code of Practice for Schools explaining their new duties under [Part 4 of the Disability Discrimination Act 1995](#) (Disability Rights Commission, 2002)

A range of free DDA material is available from the DDA helpline in the form of booklets and factsheets. They are also available in alternative formats: Braille, audio cassettes, discs and in Welsh. All publications are available from:

DDA Help

Freepost MID 02164

Stratford-upon-Avon CV37 9BR

Tel: 0345 622633

Textphone: 0345 622644

Both the Code of Practice and the DDA material mentioned above can be found at www.disability.gov.uk

Accessible Schools: Planning to increase access to schools for disabled pupils (DfES 2001, Ref: LEA/0168/2001)

Sex discrimination

A Guide to the Equal Pay Act 1970: PL 743

A Guide to the Sex Discrimination Act 1975: PL 955

The above guides are available free of charge from:

DfES Publications Centre

PO Box 5050

Annesley

Nottingham NG15 0DZ

Tel: 0845 602 2260

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The Equal Opportunities Commission (EOC) is a statutory body responsible for implementing the Sex Discrimination laws. The EOC has also produced the following guides. Code of Practice on Equal Pay (available free of charge) from:

EOC
Overseas House
Quay Street
Manchester M3 3HN
Tel: 0161 833 9244
Website: www.eoc.org.uk

Code of Practice (ISBN: 0–11–701279–3, Stationery Office £1.90)

Sexual Orientation

A guide for employers and employees; Sexual Orientation and the Workplace. This is available from

ACAS
Brandon House
180 Borough High Street
London SE1 1LW
Tel: 08702 429090
Website: www.acas.org.uk

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Religion or Belief

A guide for employers and employees; Religion or Belief and the Workplace, This is available from

ACAS
Brandon House
180 Borough High Street
London SE1 1LW
Tel: 08702 429090
Website: www.acas.org.uk

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Race discrimination

Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment (ISBN: 0–907920–29–2, Commission for Racial Equality)

The Code of Practice and other related material can be found on the Commission for Racial Equality's website at www.cre.gov.uk

Racial Discrimination. A Guide to the Race Relations Act 1976, available from:

The Home Office
Race Equality Unit
12th Floor
Queen Anne's Gate
London SW1H 9AT

The Guide can also be found at www.homeoffice.gov.uk/reu/racdisc/htm

12 DISCIPLINE AND ATTENDANCE

CHAPTER SUMMARY

This chapter concerns the procedures for excluding pupils either for a fixed period or permanently. These procedures are the same for all maintained schools. Certain fixed-period exclusions and all permanent exclusions need to be reviewed by the governing body. Governors have a role in representing the school before an independent appeal panel hearing a parent's appeal against their child's permanent exclusion. Separately, governors may volunteer to be members of such an appeal panel not involving their own school. Further guidance on exclusion is available in *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, October 2004 (DfES 0354/2004).

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

LEGISLATION

1. The [School Standards and Framework Act 1998](#)

- outlawed corporal punishment for all pupils;
- requires headteachers to determine measures to prevent all forms of bullying.

Governing bodies have duties to agree a statement of general principles from which the school's discipline policy is drawn up by the headteacher. The governing body may include principles of bullying prevention in the statement.

EXCLUDING PUPILS

2. The Education Act 2002 ("the Act") ([Section 52](#)) and Regulations, ("the Regulations") made under the Act, namely the [Education \(Pupil Exclusions and Appeals\) \(Maintained Schools\) \(England\) Regulations 2002](#): SI 2002/3178 govern the exclusion of pupils from maintained schools. "Exclude" means exclude on disciplinary grounds. There are two categories of exclusion: fixed period (formerly called suspension) or permanent (formerly called expulsion). Pupils may also be excluded from the school premises for the duration of the lunch time break between the morning and afternoon school sessions.
3. The Regulations require governing bodies, headteachers, Local Authorities (LAs) and appeal panels in discharging their functions under the Regulations to have regard to guidance given by the Secretary of State for Education and Skills.
4. Although the Act defines "exclude" as meaning simply exclude on disciplinary grounds (without specifying any degree of seriousness), the DfES guidance states that exclusion is a serious step. Exclusion should be used only in response to serious breaches of the school's discipline policy and only after a range of alternative strategies to resolve the pupil's disciplinary problems has been tried and proven to have failed. It should also only be used where allowing the pupil to remain in school would be seriously detrimental to the education or welfare of other pupils and staff, or of the pupil himself or herself. However, the current

guidance issued in October 2004 does indicate that there may be circumstances where, in the headteacher's judgement, it is appropriate to permanently exclude a child for a first or "one off" offence. These might include:

- serious actual or threatened violence against another pupil or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- carrying an offensive weapon.

Procedures for exclusion: action by the headteacher

5. Only the headteacher (or acting headteacher) has the power to exclude a pupil from school. He or she may not delegate that power to someone else. The headteacher may exclude a pupil for one or more fixed periods not exceeding a total of 45 school days in any one school year (for this purpose a lunch time exclusion counts as a half-day). He or she may also exclude a pupil permanently. He or she may also convert a fixed-period exclusion into a permanent exclusion if he or she decides the circumstances warrant this.
6. In all cases he or she must promptly:
 - inform the pupil's parent of the period of the exclusion, or that the exclusion is permanent;
 - give the reasons for the exclusion;
 - advise the parent that he or she may make representations about the exclusion to the governing body;
 - advise the parent how his or her representations may be made.

(N.B. Throughout this section for "parent" read "the pupil" if the pupil is aged 18 or over.)

7. The headteacher must immediately notify both the LA (i.e. the school's maintaining authority) and the governing body of the details of the exclusion, including the reasons for it in the case of:
 - permanent exclusions and fixed-period exclusions which are converted to permanent exclusions;
 - fixed-period exclusions totalling more than five school days in any one term;
 - any exclusion that would result in the loss of an opportunity to take a public examination.

Procedures for exclusion: action by the governing body

8. The governing body itself (or its discipline committee where one is in place) has no power to exclude a pupil, nor can it make the headteacher's original exclusion more severe by extending the period of a fixed-period exclusion, or by converting a fixed-period exclusion to a permanent exclusion. The governors' role is essentially one of reviewing the headteacher's exclusion decisions as the need arises.
9. If the governing body decides to establish a discipline committee it should consist of at least three members. The governing body should appoint a clerk to the committee. The headteacher may not be a member. In cases of:
 - permanent exclusions and fixed-period exclusions converted to permanent exclusions;
 - all fixed-period exclusions totalling more than 15 school days in any one term;
 - fixed-period exclusions totalling more than five school days in any one term, where the parent expresses a wish to make representations to the governing body;
 - exclusions that would result in the loss of an opportunity to take a public examination;

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the governing body (or committee) must meet to:

- consider the circumstances in which the pupil was excluded;
- consider any representations about the exclusion made by the parent and by the LA;
- consider whether the pupil should be reinstated immediately, reinstated by a particular date or not reinstated.

10. In the case of permanent exclusions and fixed-period exclusions totalling more than 15 school days in a term, the parent and the pupil (if the parent agrees) should be allowed to attend the meeting and make representations in person.
11. In the case of a fixed-period exclusion that would result in the pupil being excluded from the school for a total of five school days or less in any one term, the governing body (or discipline committee) must meet to consider any representations made by the parent. In such cases, the governing body cannot direct reinstatement of the pupil.
12. The Regulations set time limits for the governing body's consideration of exclusions. In the case of permanent exclusions and one or more fixed-period exclusions totalling more than 15 school days in any one term, it must consider them no earlier than six school days and no later than 15 school days after receiving notification of them. In the case of one or more fixed-period exclusions totalling more than five (but not more than 15) school days in any one term, where the parent wishes to make representations, the governing body must convene a meeting between the 6th and the 50th school day after receiving notification of the exclusion. Where a pupil may miss a public examination as a result of the exclusion, the governing body must, if practical, consider the exclusion before the pupil is due to take the examination. In the case of a fixed-period exclusion that results in a pupil being excluded from school for a total of five school days or less in a term and the parent wishes to make representations to the governing body, there is no statutory time limit, but the governors would be expected to meet within a reasonable timescale.
13. In reaching its decision on whether to direct reinstatement, the governing body (or discipline committee) is required to have regard to guidance given by the Secretary of State for Education and Skills. Governors should consider any representations made by the parent and the LA, whether the headteacher has complied with the exclusions procedure, and has had regard to the DfES guidance. If the governors decide that a pupil should not be reinstated they must inform the parent, the headteacher and the LA of their decision. In the case of a permanent exclusion they must notify the parent in writing of their decision and the reasons for it. Their letter must also advise the parent of his or her right to appeal against their decision, whom to contact, the last date for lodging an appeal, and that the notice of appeal should set out the grounds of appeal.

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Procedures for exclusion: action by the appeal panel

14. Where the governing body has upheld a permanent exclusion the parents may appeal against its decision. The Schedule to the Regulations governs appeals against exclusion of pupils. No appeal may be made by the parent after the 15th school day after the day on which the parent was given notice in writing of the governing body's decision.
15. The LA must establish an appeal panel consisting of three or five members. One member must be a lay member who takes the chair. Another member (or, in the case of a five-member panel, two members) must be, or have been within the last five years, a headteacher of a maintained school. The other member (or, in the case of a five-member panel, two members) must be, or have been within the last six years, a governor of a maintained school who has served as a governor for at least 12 consecutive months and has not been a teacher or headteacher during the last five years.

16. A parent's appeal must be heard no later than the 15th school day after the day on which his or her appeal was lodged, although the panel may adjourn. The appeal panel must give the parent the opportunity to attend and make oral representations. The parent may be represented or accompanied by a friend.
17. The panel must allow the headteacher to make written representations and to attend and make oral representations. It must also allow the LA and the governing body to make written representations and to be represented by an officer of the LA (nominated by the LA) or a governor (nominated by the governing body), who may attend and make oral representations. The panel may decide:
 - to uphold the exclusion;
 - to direct reinstatement;
 - that because of exceptional circumstances or other reasons, it is not practical to direct reinstatement, but that it would otherwise have been appropriate to have done so.
18. The panel must give its decision in writing to the parent, the LA, the governing body and the headteacher by the end of the second working day after the conclusion of the appeal hearing. If a permanent exclusion is upheld, and if the pupil lives outside the area of the LA arranging the appeal, the clerk should ensure that the home LA is informed immediately so that it can make arrangements for the pupil's continuing education.
19. The decision of the panel is binding on the parties. If the parent considers that there was maladministration by the appeal panel, he or she may make a complaint to the Local Government Ombudsman and, if either the parent or the governing body considers the panel's decision perverse, they may seek judicial review. The Secretary of State for Education and Skills has no powers to quash or amend the decision of an appeal panel.

Money following the child

20. The law provides for funding to follow a pupil who has been permanently excluded. The amount to be transferred to the new education provider is calculated in accordance with the formula laid down in the [Education \(Amount to Follow Permanently Excluded Pupil\) Regulations 1999](#) : SI 1999/495 (as amended). The effective date of exclusion used for calculating the amount to follow was changed with effect from 22 March 2004. Part 8 of the exclusion guidance, published online only, provides guidance on the calculation of the amount to follow the pupil.

SCHOOL ATTENDANCE

21. Schools should have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance. 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.
22. Governors should take a close and regular interest in attendance issues and should ensure that school leaders take appropriate action on attendance. Information and advice, along with examples of effective practices, is available on the DfES School Attendance website at www.dfes.gov.uk/schoolattendance

Attendance and admissions records

23. Under the [Education \(Pupil Registration\) Regulations 1995](#) the governing body is responsible for making sure that admissions and attendance registers are kept. These Regulations apply to all schools.
24. An admissions register must contain the details in alphabetical order of all the pupils that attend school, including:
 - their full name;
 - their sex;
 - the name and address of each parent and the parent or guardian with whom the child resides, in case of emergency;
 - their date of birth;
 - the date of admission or re-admission;
 - the name and address of the school they last attended, if any.
25. The Education (Pupil Registration) Regulations set out the grounds on which the name of a pupil must be deleted from the admissions register.
26. The attendance register must be called at the beginning of each morning session and once during the afternoon session and show whether each registered pupil at the school is present, absent or attending an approved educational activity. If a pupil of compulsory school age is absent the register must indicate whether they were:
 - on an approved educational activity
 - authorised or unauthorised to be absent.

Guidance on how to classify absence can be found on the School Attendance website at www.dfes.gov.uk/schoolattendance

27. Registers are important documents and must be kept in a safe place since 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.
 - Hand-written registers must be kept in ink.
 - Alternatively, schools may use computers to keep either or both registers.
 - Whatever method is used, the original entry in a register and any changes must be clearly shown.
 - Schools using computers for attendance registers must print the register at least once a month.
 - The print-outs must be bound into annual volumes after the end of each school year.
 - A print-out of a computerised admissions register must be made at least once a year.
 - Admissions and attendance registers must be kept for at least three years from the date they were last used.
 - The governing body must make both registers available to school inspectors and anyone authorised by the LA.
 - The LA may also take extracts, but these may only be taken for educational purposes, not to provide information for other LA purposes.
28. Governing bodies will no longer be required to add their rates of absence in the school prospectus. They will be included in the School Profile automatically based on the information that is included in the school and college achievement and attainment tables.

Notifying the LA

29. LAs have a responsibility for enforcing 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;
 - identifying problems that are affecting the child's attendance at school and agreeing plans for improving attendance with parents.
30. At agreed intervals, the governing body must give the LA the name and address of every pupil who does not go to school regularly and:
- who has been continuously absent for not less than 10 school days, specifying the cause of absence if known (unless the reason is sickness or granted leave of absence);
 - inform the LA if a pupil is likely to be absent for more than four weeks on medical grounds (the cause of absence must be shown if known);
 - inform the LA of any pupils of compulsory school age who have been taken off a roll because the parents have informed the school in writing that the child will be taught at home (this is to make sure that the LA has the chance to assess whether this will be an effective alternative to school).

School attendance targets

31. Under the [Education \(School Attendance Targets\) \(England\) Regulations 2005](#), the governing body is required to agree with the LA attendance targets for reducing authorised and unauthorised absences from school. These absences will be expressed as a percentage of the total possible attendance by pupils. The Regulations set out the dates for the setting and submission of these targets for the academic years 2005–6, 2006–7 and 2007–8. The Regulations can be viewed at www.dfes.gov.uk/schoolattendance/legislation.

School absence data

32. School governors are bound by the statutory requirement under [Section 538 of the Education Act 1996](#) which requires governing bodies to provide information requested by the Secretary of State for Education and Skills. This includes absence data that will be collected every term either through the School Census or by one of the DfES's contractors. For some secondary schools, who have high overall absence or high unauthorised absence, data collection may take place every half term. LAs will let schools know if they are one of the priority schools that needs to do this.

Parenting contracts

33. If a pupil fails to attend school regularly, or is excluded, the LA or governing body of the school may consider whether it would be appropriate to offer a parenting contract to the parent. A parenting contract is a formal written agreement between a parent and either the LA or the governing body of a school and should contain:
- a statement by the parents or guardians agreeing to comply for a specified period with whatever requirements are specified in the contract;
 - a statement by the LA or governing body agreeing to provide support to the parents or guardians for the purpose of complying with the contract.
34. Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract if they do not wish to do so. There is no obligation on the LA or governing body to offer a parenting contract in cases of non-attendance.

35. 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) and in this context it is:
- the governing body’s name that must appear on the contract
 - the governing body that will have ultimate responsibility for the parenting contract.
36. The governing body may delegate responsibility for parenting contracts to the headteacher. The headteacher may commit funds on behalf of the governing body where the governing body has chosen to delegate this power. However, the overall policy decision of whether parenting contracts should form part of the school’s attendance policy must remain with the governing body.

Further information on parenting contracts can be viewed at:

<http://www.dfes.gov.uk/schoolattendance/otherinitiatives/parentingcontracts.cfm>

Penalty notices

37. Overall responsibility for issuing penalty notices rests with the LA.
- Headteachers are empowered to issue penalty notices and to authorise their deputy and assistant head to do the same.
 - Headteachers wishing to issue, or authorise their staff to issue penalty notices, must first gain the agreement of their governing body. The school’s attendance policy (where applicable) must be revised accordingly.
 - Headteachers and deputy and assistant heads must comply with the local code of conduct issued by their LA when issuing penalty notices and provide a copy of any notice issued to the LA.

Further information on penalty notices can be viewed at:

<http://www.dfes.gov.uk/schoolattendance/otherinitiatives/Penalty%20Notice.cfm>

Length of the school day and term

38. Decisions on the dates for school term and holiday dates for community, voluntary controlled or community special schools are made by the LA and dates for foundation, voluntary aided or foundation special schools by the school governing body.
39. The governing body decides when sessions should begin and end on each school day. Sessions must allow enough lesson time to deliver a broad and balanced curriculum that includes the national curriculum and religious education. Schools are free to decide the length of each lesson but current recommendations per week are as follows:

Age	Suggested minimum weekly lesson time (hours)
5–7	21.0
8–11	23.5
12–13	24.0
14–16	25.0

40. For special schools the timings need to be more flexible. Schools need to allocate time for activities such as training in mobility, signing or the use of Braille and for any medical treatments required. They also need to take into account the length of time that pupils spend each day travelling to and from school. However, in general, special schools should regard the guidance in paragraph 39 as representing a level of provision to which they should aspire where practicable and where it is in the educational interests of the individual pupil. When determining hours of taught lessons, special schools should bear in mind the range and level of work being undertaken by pupils as well as their chronological age.
41. The recommended lesson hours do not include time for collective worship, registration or breaks. Enough time should be allowed for all these activities.

42. The headteacher must make information available to parents and others about the starting and finishing times of the school sessions. Copies of the information must be available for parents to read at the school and must be sent free of charge to parents who ask for it.
43. The [Changing of School Session Times \(England\) Regulations 1999](#) apply to community, community special and voluntary controlled schools. They do not apply to voluntary aided, foundation and foundation special schools or maintained nursery schools. However, it is recommended that the governing bodies of such schools follow broadly the same procedures when considering changes.
44. The Regulations provide that changes in the times at which school sessions are to begin in the morning and/or end in the afternoon may only be introduced at the beginning of a school year. Other changes may be introduced at the beginning of any school term. If a governing body wants to make any such changes, it must first consult the LA, the headteacher and all school staff. After consultation the governing body must:
- prepare a statement (in English and any other language they consider appropriate) specifying the proposed change and, if required to do so by the LA, annex to it any comments from the LA;
 - provide (free of charge) a copy of the statement and any annexes to all parents and make copies available for inspection at the school;
 - call a meeting, not less than two weeks after circulating a copy of the statement and any annex, to enable parents and anyone else invited by the governing body to discuss the proposed change;
 - consider any comments made at the meeting and decide whether to implement the proposed change, with or without any modification;
 - inform the LA and parents of any change at least three months before it takes effect, where the change is to the beginning of a morning session and/or the end of an afternoon one, and at least six weeks beforehand in the case of any other change.
45. An LA may charge a school for the extra transport or other costs resulting from a governing body's decision to change their school day.

Attendance outside school premises

46. The governing body can make pupils attend instruction and training outside school premises for purposes other than religious education or collective worship.

THE LAW

N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up to date list of legislation applying to schools, please refer to the GovernorNet website

www.governornet.co.uk

Education Act 1996

Education Act 1996: Sections [494](#) and [548](#) (as amended by the [School Standards and Framework Act 1998](#))

[Education Act 1996: Sections 444, 444A, 444B and 444ZA](#) (dealing with Penalty Notices and failure to secure attendance)

School Standards and Framework Act 1998: Sections 61 and 63

Education Act 2002: Sections [29](#), [32](#) and [52](#)

[Antisocial Behaviour Act 2003: Section 19](#) (parenting contracts)

Education Act 2005

[Education \(School Hours and Policies\) \(Information\) Regulations 1989](#): SI 1989/398
[Education \(Pupil Registration\) Regulations 1995](#): SI 1995/2089 (as amended by the
[Education \(Pupil Registration\) \(Amendment\) Regulations 1997](#): SI 1997/2624 and
[Education \(Pupil Registration\) \(Amendment\) \(England\) Regulations 2001](#): SI 2001/2802)
[Education \(School Performance Information\) \(England\) Regulations 2001](#): SI 2001/3446

[Education \(School Attendance Targets \(England\) Regulations 2005](#): SI 2005/58

[Education \(Penalty Notices\) \(England\) Regulations 2004](#): SI 2004 No. 181 (as amended
 by the [Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2004](#): SI 2004 No.
 920 and [Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2005](#): SI 2005
 No. 2029)

[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)
[Education \(School Information\) \(England\) Regulations 2002](#): SI 2002/2897

[Changing of School Session Times \(England\) Regulations 1999](#): SI 1999/2733

[Education \(Pupil Information\) \(England\) Regulations 2000](#): SI 2000/297

[Education \(Pupil Exclusions and Appeals\) \(Maintained Schools\) \(England\) Regulations](#)
[2002](#): SI 2002/3178

[Local Education Authority \(Behaviour Support Plans\) Regulations 1998](#)

[Education \(Pupil Exclusions\) \(Miscellaneous Amendments\) \(England\) Regulations 2004](#): SI
 2004/0402

GUIDANCE

DES Administrative Memorandum 1/88

DES Circular 7/90: Management of the School Day

DFE Circular 17/94: Money following the Permanently Excluded Pupil

DfEE Circular 2/96: Reports on Pupils' Achievements in Primary Schools

DfEE Circular 3/96: Reports on Pupils' Achievements in Secondary Schools

DfEE Circular 11/96: School Prospectuses and Governors' Annual Reports in Primary
 Schools in 1995/96 (and additional guidance booklet)

DfEE Circular 12/96: School Prospectuses and Governors' Annual Reports in Secondary
 Schools in 1995/96 (and additional guidance booklet)

DfEE Circular 11/97: School Leaving Date for 16 Year Olds

DfEE Circular 1/98: LEA Behaviour Support Plans

Managing Behaviour and Attendance is located on the School Attendance website
[\(www.dfes.gov.uk/behaviourandattendance\)](http://www.dfes.gov.uk/behaviourandattendance) this is web based guidance for local authorities
 and schools on behaviour and attendance – The guidance replaces Circulars 10/99 and
 11/99 Social Inclusion Pupil Support.

Effective Attendance Practice in Schools – An Overview

Ensuring Regular School Attendance: Guidance on the Legal Measures available to Secure Regular School Attendance

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. Ref: DfES/0354/2004

13 PROVIDING INFORMATION

CHAPTER SUMMARY

This chapter details the roles and responsibilities of governing bodies, headteachers, Local Authorities (LAs) and other educational establishments in providing information to each other, parents and the Secretary of State for Education and Skills. The main types of information covered include careers guidance, arrangements for pupils with special educational needs (SEN), Children and Young People's Plans (CYPP), the school prospectus, the School Profile, the Governors' Annual Report to parents, home-school agreements, pupils' educational records and pupil reports. Guidance is also provided for governors on the [Freedom of Information Act](#) and sets out their responsibilities under the Act.

GENERAL

1. School governors will receive information from the Local Authority (LA), the headteacher and the Department for Education and Skills (DfES). Some of this will be background information that they receive when they first join the governing body. Other material will be sent to the whole governing body from time to time to help it carry out its duties.
2. The governing body must provide certain information: some to parents or pupils, some to the LA, some to the headteacher and some to the DfES.
3. Schools should notify themselves as data controllers under the [Data Protection Act 1998](#), unless certain exemptions apply. Advice on this subject can be obtained from the Information Commissioner's Office (ICO).

INFORMATION SUPPLIED BY THE LA

4. 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.
5. The LA supplies the governing body and the headteacher with financial information concerning the school.

INFORMATION TO PROVIDER OF STATUTORY CAREERS SERVICES

6. Schools are required to work with the Connexions Service to ensure that pupils have access to guidance materials and a wide range of up to date reference materials relating to careers education and careers opportunities. Where possible, this information should be provided in a dedicated careers library with computer-based resources. Where this is not possible, a school should work with their local Connexions Service to provide the next best form of provision that satisfies pupils' information needs. Access should be provided for all secondary pupils.
7. The school and Connexions Service should review jointly the effectiveness of current careers information provision in meeting their pupils' needs, including information on wider Key Stage 4 and post-16 education and training options and information about financial support. Advice and support (including resources) for the careers library should form part of an annual partnership agreement between the school and the Connexions Service.
8. Schools must provide the local Connexions Service with a copy of their prospectus to assist them in their work with young people (especially with Year 10 and 11 pupils).

9. Connexions Personal Advisers or other relevant staff of the local provider of careers services for the DfES shall be provided, on request, with the name and address of every relevant pupil in the institution. They will also be provided with any information held by the school about a pupil which the Connexions Personal Adviser needs in order to provide the pupil with advice and guidance on decisions about careers, or with other information relevant to such decisions. The requirement to release information over and above the pupil's name and home address is subject to veto by the parent or guardian of a pupil (if under 16) or the pupil (if 16 or older) if they have indicated that the information should not be provided.
10. Where a school agrees to participate in the Connexions Card initiative it must explain to pupils (if 16 or older) or their parents or guardians (if under 16) that personal details will be provided to the Connexions Card team and afford to them the opportunity to opt out. Thereafter, the school provides the information required to operate the initiative.

INFORMATION FROM THE GOVERNING BODY TO THE LA

11. 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.
12. The governing body must make available to the LA details of the arrangements made for pupils with special educational needs (SEN). Governing bodies of community and foundation special schools must provide certain information to parents of pupils or prospective pupils, LAs and District Health Authorities, including:
 - basic information about the school's SEN provision;
 - information about the school's policies for the assessment and provision for all pupils with special educational needs;
 - information about the school's staffing policies and partnership with bodies beyond the school.
13. Full details about the information to be published are contained in [The Education \(Special Educational Needs\) \(Information\) \(England\) Regulations 1999](#). These Regulations are contained in the Code of Practice on Identifying and Assessing Special Educational Needs.
14. Governing bodies must publish the information in a single document and make copies available free of charge to parents, the LA and District Health Authority. The LA may publish the information referred to above if the governing body agrees. Where there is such an agreement, the governing body must supply the LA with the information, which must be published without alteration.

Children and Young People's Plan

15. The Children and Young People's Plan (CYPP) is an important element of the reforms to children's services underpinned by the Children Act 2004. On the basis of a new statutory duty all authorities are required to prepare (and publish), in conjunction with local partners, a single, strategic, overarching plan for all local services for children and young people. (LAs categorised as excellent under Comprehensive Performance Assessment (CPA) will not be required to have a CYPP, although indications are that all will do so.) The CYPP is part of the children's services improvement cycle as set out in *Every Child Matters: Change for Children*. Its key aim is to support more integrated and effective services and to secure better outcomes for children and young people. Authorities are required to publish their first plan by April 2006.
16. The CYPP will act as a vehicle for LAs and a wide range of partners, including schools to work together to agree clear targets and priorities for all their services to children and young people. The CYPP should also help identify what actions schools and other key partners should take to achieve targets and ensure delivery. It will therefore be important for the LA to involve all partners at a formative stage to give enough time to allow full discussion of available local information so that priorities can be identified and joint working agreed.

17. Schools are the only universal service all children have contact with most days of the week and will increasingly play a key part in delivering services for children and young people. It is therefore crucial that schools fully understand their role in both preparation and the delivery of CYPP and their need to work closely with the authority and other partners to ensure that the school development plans contribute to positive outcomes for children and young people.
18. The introduction of the CYPP is part of a programme of plan rationalisation for LAs. The CYPP replaces the requirements for seven statutory plans (including the education development plan) and 10 non-statutory plans.
19. Under the [Education Act 2005](#) which received royal assent on 7 April 2005, LAs will continue to set statutory targets once all primary and secondary schools have reported on their targets. As part of the target setting exercise, LAs will provide support and advice to governors and headteachers to help their schools set realistic, child-based targets making effective use of the data available to them. Details of the statutory targets the LA has set for pupils' achievement should be included in the CYPP.
20. If the LA believes a school is showing lack of ambition in its targets, it will want to be assertive in challenging and negotiating and offer additional or targeted support to help the school achieve them. Where a school target is being challenged by the LA, the reasons must be fully explained to the school and the governing body so that it can be involved in further discussions. It will then be for the school to take the final decision about the targets it sets. The discussions about schools' targets form part of the Single Conversation with the School Improvement Partner which is being rolled out as part of the New Relationship with Schools.

Further information on the Every Child Matters agenda and the CYPP can be found at www.everychildmatters.gov.uk

INFORMATION FROM THE GOVERNING BODY TO PARENTS

School prospectus

21. Each year the governing body must publish a school prospectus for parents and prospective parents. From 1 September 2005 the compulsory content of the prospectus is much simplified. This means greater freedom for schools in deciding what information is best provided to parents in their prospectuses and in responding to the requests of parents for particular pieces of information. The only obligatory content in the prospectus is now the information about the SEN and disability work of the school that was previously required in the Governors' Annual Report. This ensures parents continue to have easy access to this information.
22. From 1 September 2005 the obligatory content of the prospectus is as listed below. Content in addition to this is for schools to decide upon. Obligatory content should include:
 - arrangements for the admission of pupils with disabilities;
 - details of steps to prevent disabled pupils being treated less favourably than other pupils;
 - details of existing facilities to assist access to the school by pupils with disabilities;
 - the accessibility plan (required under the Disability Discrimination Act 1995) covering future policies for increasing access to the school by pupils with disabilities;
 - information about the implementation of the governing body's policy on pupils with special educational needs and any changes to the policy during the last year.

23. The prospectus must be published during the school year immediately preceding the admissions school year, i.e. prospectuses published in 2005–6 will be for admissions in 2006–7. The prospectus must be published at least six weeks before the final date by which parents are asked to apply for admission to the school, or to express a preference for a place.

School Profile

24. Governing bodies of maintained schools, except maintained nursery schools, are required to complete a School Profile every year from the academic year 2004–5 onwards. This will be an online system with all the data for each school already provided.
25. The Profile and the school prospectus outline the minimum interaction that schools should have with parents. Schools are free to communicate and interact with parents above and beyond this requirement in any way they wish.
26. The School Profile has three elements:
- performance data pre-populated by the DfES;
 - a summary of the latest Ofsted report;
 - narrative sections written by the school.
27. The narrative sections for the school to complete include the following headings:
- What have been our successes this year?
 - What are we trying to improve?
 - How have our results changed over time?
 - How are we making sure that every child gets teaching to meet their individual needs?
 - How do we make sure our pupils are healthy, safe and well supported?
 - What have we done in response to Ofsted?
 - How are we working with parents and the community?

The narrative sections vary slightly in size, ranging from approximately 100 to 200 words.

28. Although Profiles include data from November each year, this will not be validated until early in the spring term, so schools may wish to wait until then before completing their Profiles.
29. Schools may choose when in the year they prepare and publish their Profile, but must do so at least once in every school year.
30. More information and guidance can be found at www.teachernet.gov.uk/management/newrelationship/schoolprofile

Governors' Annual Reports – maintained nursery schools only

31. All schools were previously required to provide an Annual Report to parents, which was discussed at the annual parents' meeting. However, from 1 September 2005 only maintained nursery schools are required to produce the Annual Report. All other maintained schools are required to produce a School Profile (see paragraphs 24 to 30). No schools (including maintained nurseries) are required to hold an annual parents' meeting.

32. The Annual Report 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 (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 arrangements for admitting disabled pupils 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 special educational needs 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 the 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

33. The governing body is required to have a written home-school agreement in place, drawn up in consultation with parents. The agreement should explain the school's aims and values and the respective responsibilities of the school and of the parents, and what the school expects of its pupils. The governing body must invite parents to sign a declaration in support of the agreement. It can also invite pupils to sign where they consider that the pupils are sufficiently mature to do so. Guidance on home-school agreements can be found in the DfEE booklet *Home-School Agreements Guidance for Schools*.

Pupils' educational records

34. The [Education \(Pupil Information\) \(England\) Regulations 2005](#), which came into force on 8 July 2005, require maintained schools (other than nursery schools) and any special school not so maintained to keep a curricular record for each pupil and disclose on request a pupil's educational record to their parent. Under these Regulations, maintained schools must transfer a pupil's educational record to their new school when they change schools.
35. Schools should note some changes from superseded Regulations. The duties outlined above regarding pupils' educational records have passed from headteachers to governing bodies, in line with the norm of powers and duties sitting with governing bodies as those legally responsible for the management of schools. However, a governing body may delegate these duties to the headteacher, having regard to their largely strategic role and the headteacher's responsibility for day-to-day organisation, management and control of the school.

36. Any Personal Educational Plan (PEP) for a pupil is now part of their educational record. (The PEP is the document initiated by children's social services when a child is taken into care and maintained by the child's school, which provides a record of educational needs, objectives and progress and achievements.) From 3 October 2005, when a pupil transfers to a school in Wales, Scotland or Northern Ireland, their educational record, including their common transfer file, must be transferred to that school in line with the arrangements for transfer within England.

Keeping a curricular record for every pupil

37. The governing body is responsible for ensuring that a curricular record is kept for every pupil registered at the school and that it is updated at least once every school year. The curricular record means a formal record of a pupil's academic achievements, his or her other skills, and abilities and progress in school.

Parents' requests to see or have copies of their child's educational record

38. The governing body is responsible for a pupil's educational record being 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 must be provided to them, also within 15 school days of that request being received. The governing body can charge a fee for the copy, but if it does this, it must not be more than the cost of supply. The educational record should include the curricular record, but also other information about the pupil that may be kept by the school, such as details of behaviour and family background (definition given below).

The educational record

39. The pupil's educational record is comprised of any record of information, other than information which is processed by a teacher solely for the teacher's own use, which:
- is processed* by, or on behalf of, a governing body of, or a teacher at, any school maintained by an LA and any special school not so maintained;
 - relates to any person who is or has been a pupil at any such school; and
 - originates from, was supplied by, or is on behalf of:
 - i) any employee of the LA who maintains the school (or former school) attended by the pupil to whom the record relates;
 - ii) any teacher or other employee at the school or at the pupil's former school (including any educational psychologist engaged by the governing body under a contract for services) where the school is a voluntary aided, foundation or foundation special school or a special school not maintained by an LA;
 - iii) the pupil to whom the record relates; or
 - iv) a parent of that pupil.
- In addition, the educational record includes:
- any statement of SEN held in respect of the pupil;
 - any PEP held in respect of the pupil.

*N.B. The "basic interpretative provisions" provided in the [Data Protection Act 1998, Chapter 29](#) re quoted below and provide the definition of "processing" to be applied.

"Processing", in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data including:

- *organisation, adaptation or alteration of the information or data;*
- *retrieval, consultation or use of the information or data;*

- *disclosure of the information or data by transmission, dissemination or otherwise making available; or*
- *alignment, combination, blocking, erasure or destruction of the information or data.*

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

40. When schools comply with a request to see or have a copy of a pupil's educational record under the [Education \(Pupil Information\) \(England\) Regulations 2005](#), there is some information that must not be disclosed. This is any information that the child could not lawfully be given under the [Data Protection Act 1998](#) (DPA 1998) or to which he or she would have no right of access under that Act or by virtue of any order made under Section 30(2) or Section 38(1) of the Act. The following information must not be disclosed:

- information, the disclosure of which would be likely to cause serious harm to the physical or mental health or condition of the child or someone else;
- information as to whether the child is or has been subject to or may be at risk of child abuse, where the disclosure of that information would not be in the best interests of the child;
- references supplied to potential employers of the child, any national body concerned with student admissions, another school, an institution of further or higher education, or any other place of education and training;
- information supplied by the school in a report to any juvenile court, where the rules of that court provide that the information or part of it may be withheld from the child;
- information recorded by the pupil during an examination;
- information concerning the child that also relates to another person who can be identified from that information, or which identifies another person as the source of that information, unless the person has consented to the disclosure, or it is reasonable in all the circumstances to disclose the information without his or her consent, or the person is an employee of the LA or of the school. (This exemption does not apply where it is possible to edit the information requested so as to omit the name or any other identifying particulars of that other person.)

Access to information about pupils with statements of SEN

41. Access to information about pupils with statements of SEN is governed by [The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#) and the Code of Practice on Identifying and Assessing Special Educational Needs. Where a child has a statement of SEN, that statement forms part of the child's educational record. The parent must be sent a copy of the statement.

Requests by pupils to see their educational record under The Data Protection Act 1998

42. Both manual and computerised personal information held by schools are subject to the DPA 1998. Under the Act, pupils who submit written requests to see or have copies of their records must be allowed to do so within 40 days, unless it is obvious they do not understand what they are asking for. When schools receive requests from pupils for disclosure of educational records under the DPA 1998, they must not disclose any information which is prohibited from disclosure under that Act.
43. If a child seeks access to his or her statement of SEN, the school should normally comply with the request unless there are exceptional circumstances which suggest that access should not be granted (for example if the child is clearly unable to understand the statement or disclosure of the statement could cause serious harm to the child).
44. Schools should always bear in mind that a statement may contain sensitive personal information and if in any doubt as to whether the statement, or any other information that

forms part of the pupil's educational record, should be disclosed in any circumstances they should contact either the DfES or the Information Commissioner (IC).

45. Information about specific restrictions on disclosure of statements is contained in the Code of Practice on the Identification and Assessment of Special Educational Needs and in [Regulation 24 of The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#). Queries relating to charging for copies made for pupils should also be addressed to the IC. More information can be found at www.informationcommissioner.gov.uk

Dealing with complaints

46. Ways of handling certain types of complaints (for example admissions and curriculum, exclusions) are laid down by law (see chapters 3, 6, 10 and 12 of this Guide). For the wide variety of other complaints, from 1 September 2003, governing bodies of all maintained schools and maintained nursery schools in England are required, under [Section 29 of the Education Act 2002](#), to have in place a procedure to deal with complaints relating to the school and to any community facilities or services that the school provides. The law also requires the procedure to be publicised (see chapter 3 of this Guide).

INFORMATION BY THE GOVERNING BODY TO OTHER SCHOOLS AND EDUCATIONAL ESTABLISHMENTS

Transferring the curricular record when a pupil is under consideration for admission to another educational establishment

47. When a pupil is being considered for a place at another school or institution of further or higher education, if the governing body is asked by the "responsible person" at that institution for the pupil's curricular record, it must be provided, free of charge, within 15 school days of the request being received. The responsible person is the headteacher of an independent school, the governing body of any other school or the person responsible for the conduct of any institution of further or higher education. The record sent must not include results of any assessments of the pupil's achievements.

Transferring a pupil's educational record when he or she moves to a new school

48. When a pupil ceases to be registered at one school and becomes registered at another (either maintained or independent) in England, the governing body of the old school is responsible for transferring their educational record to the new school. This must be done no later than 15 school days after the day when the pupil ceases to be registered at the old school.
49. Since 3 October 2005, schools have also been required to transfer pupil records to schools to which they transfer (either maintained or independent) in Wales, Scotland and Northern Ireland. The record must be sent to the governing body of the new school, or if the school is an independent one, the headteacher. Any statement of SEN or PEP for a child forms part of their educational record and as such must be forwarded to the child's new school.

When a school doesn't know the pupil's new school

50. The duty to transfer a pupil's record doesn't apply where the old school doesn't know the new school and it is not reasonably practicable for them to find it out. What is reasonably practicable will depend on circumstances, but schools might be expected to telephone and write to the pupil's parents. Where neither of these approaches is successful, and it would involve disproportionate effort to discover the pupil's new school by other means, the school will be justified in deciding it is not reasonably practicable to fulfil the requirement.

Although it is not a requirement that they should do so, in these circumstances schools are encouraged to send the pupil's common transfer file to the TeacherNet database of "missing" pupils.

When a school receives a request for a pupil's educational record from a school to which he or she has transferred

51. If the pupil's old school receives a request for their educational record (which they still hold) from the headteacher of an independent school or the governing body of a maintained school, the governing body must ensure it is provided within 15 school days of the request being received.

The common transfer file

52. When pupils transfer schools it is important their new school has, and acts on, information about previous performance. This is especially true if the dip between Key Stage 2 and Key Stage 3 is to be avoided. The requirement to send the common transfer file from the old school to the new school ensures specific information about the pupil is transferred with them.
53. The file data must be transferred from any maintained school in England to any other maintained or independent school in England to which a pupil transfers within 15 school days of the pupil ceasing to be registered at the old school. All such schools are expected to have the capability to transfer and receive the defined items of pupil data electronically.
54. Since 3 October 2005 transfer has also been required to schools in Wales, Scotland and Northern Ireland as outlined below. The [Education \(Pupil Information\) \(England\) Regulations 2005](#) that came into force on 8 July 2005, describe the information that must be transferred and the method by which transfer must take place.

Changes to note that came into effect from 3 October 2005

55. Since 3 October 2005, where a pupil ceases to be registered at a maintained school in England and moves to a school, maintained or independent, in Wales, Scotland or Northern Ireland, their common transfer file must be transferred to that new school in line with the arrangements for transfer within England.
56. Since 3 October 2005, wherever both the school transferring the common transfer file and the school receiving it have the necessary facilities, then transfer must take place either:
 - through the secure file transfer service on the TeacherNet website; or
 - through an intranet provided for the purpose by or on behalf of an LA.
57. Although the basic model is that the old school will send the common transfer file to the new school by one of these methods, the law allows the file to be provided by LAs where there are agreed local arrangements to that effect.
58. Previously schools have also been able to transfer the file by floppy disc or email attachment, but they will appreciate the need to transfer this data by the most secure means available. Where schools experience difficulties in transferring the data using the DfES secure file transfer service there is advice at www.teachernet.gov.uk/management/tools/ims/s2s

Arrangements for when the old or new school doesn't have the facilities to transfer or receive the common transfer file via the DfES secure file transfer service, or an intranet provided by or on behalf of an LA

59. Where schools do not have the capability for electronic transfer between themselves, either by means of the secure file transfer service on the TeacherNet website or through

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an intranet provided for the purpose by or on behalf of an LA, they may agree between themselves the form in which the information will be transferred. An example of this might be where, since 3 October 2005, a maintained school in England is transferring the common transfer file to a school in Scotland or Northern Ireland.

Timing of transfer

60. The law requires that common transfer file data is sent to the receiving school no later than 15 school days after the day on which the pupil ceases to be registered at the old school. But schools do not have to transfer all the data at the same time. They might, for example, arrange to transfer basic data about pupils transferring from primary to secondary school, together with their end of Key Stage 1 assessment information, in February, and follow that up later with a second transfer of data, covering Key Stage 2 assessments and tests.
61. As long as the unique pupil number is included, the new data will be added to the existing record and there will be no danger of a duplicate record being created for the pupil. Alternatively, the data might be transferred by an LA in England when, through the co-ordinated admissions process, it is able to notify the maintained secondary schools in its area of the pupils who have been offered and accepted a place in the secondary school.

What to do if the old school does not know the identity of the new school

62. Sometimes schools will not know the identity of the new school to which a pupil has transferred. Although it is not a requirement that they should do so, in these circumstances schools are encouraged to send the common transfer file to the special area of the TeacherNet secure file transfer website, which forms a database of “missing” pupils. Schools that do not receive common transfer files for new pupils can ask named contacts in the LA to search this database to see if the files are there.

Requesting the common transfer file from a pupil's former school

63. If a new school is aware of the identity of a pupil's former school, but hasn't been sent the common transfer file or educational record, these can be requested directly from the former school. The former school is required to send the information held to the new school within 15 school days of receiving the request.

INFORMATION FROM THE HEADTEACHER TO PARENTS AND OTHERS

Pupil reports

64. It is a requirement for headteachers of maintained schools to provide an annual written report on pupils' educational achievements for every registered pupil at their school. This must be provided to the pupil's parent every school year, or if the pupil is 18 or over, to the pupil. Where a pupil is 18 or over, a headteacher can also provide the report to the pupil's parent, as well as to the pupil, where the headteacher considers there are special circumstances which make it appropriate.
65. Minimum content, prescribed by the Regulations, can be provided in one or more such reports. Schools can, of course, provide more than this minimum information required and headteachers can have a report translated, if appropriate. The information required in the annual pupil report must be provided by the end of the summer term of the school year to which the report relates. The only exception to this is in respect of some specific information that may be received after that and which is outlined below.
66. Where a pupil is no longer of compulsory school age and has left the school, or is proposing to do so, headteachers are required to provide the pupil with a school leaver's

report (in place of the annual pupil report). The school leaver's report must be provided by no later than 30 September following the pupil's last year at the school.

Changes to note

67. From 8 July 2005 schools have no longer been required to report Key Stage 1 task and test results in pupil reports, but they must report teacher assessments. Also from 8 July 2005, where results of public examinations, national curriculum tests or reviews undertaken by the external marking agency of any national curriculum tests taken are not received by headteachers until after the end of the summer term, and cannot, therefore, be provided to parents by the end of that term, then headteachers must provide them to parents within 15 school days of receiving them.

Arrangements for parents/pupils over 18 to discuss the report

68. Headteachers must make arrangements to enable the recipient of the report to discuss it with the pupil's teacher if he or she wishes.

Minimum required contents of pupil reports for pupils in Reception Year to Year 13

69. 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 QCA provide detailed information about reporting from foundation stage to the end of Key Stage 3.

70. Some information is exempt from disclosure in pupil reports. This includes information concerning the pupil, but which also relates to another person who can be identified from that information, and 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.
71. So, for example, this would include information that would disclose the levels in any attainment target or subject of any other child. (This exemption does not apply where it is

possible to edit the information requested so as to omit the name or any other identifying particulars of that other person.)

Other exempt material is that outlined above in the information about pupils' educational records (see paragraph 40).

Content of reports where a pupil has a statement of SEN

72. Reports for the annual review of a pupil's statement of SEN may, if schools wish, serve as the annual report to parents. If so, headteachers should ensure the report provides the minimum information required in respect of any other pupil in the same school year. Additionally, schools should always provide contextual information, in particular by supplementing the minimum information with a more detailed account of a pupil's progress in relation to the curriculum that they are following.

Content of the headteacher's report to school leavers

73. The headteacher's report to school leavers must contain brief particulars of the pupil's progress and achievements in subjects and activities forming part of the school curriculum, other than in relation to any public examination or vocational qualification.

INFORMATION FROM THE GOVERNING BODY TO THE SECRETARY OF STATE FOR EDUCATION AND SKILLS

74. The governing body must give the Secretary of State for Education and Skills details of the results of national curriculum assessments taken by pupils, for the preparation of the national analyses that the DfES publishes.
75. Each year the governing bodies of all maintained schools have to provide information to be used in the secondary school and the primary achievement and attainment tables (formerly performance tables). The most recent sets of tables are available at www.dfes.gov.uk/performance/tables

INFORMATION FROM THE HEADTEACHER TO THE GOVERNING BODY

76. The headteacher must give the governing body any information requested by it for the purpose of the exercise of any of their functions.

TRANSLATING DOCUMENTS

77. The governing body will want to consider whether any documents that have to be published or made available for inspection at the school should be translated into other languages. Examples might include the prospectus or details of the LA's arrangements for considering complaints about the curriculum. If it thinks there is a need, it should arrange translation.

FREEDOM OF INFORMATION ACT 2000

78. On 1 January 2005 the [Freedom of Information Act 2000](#) (FOIA) came fully into force. Since that date there has been 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 amongst public sector bodies, and therefore improve public understanding of how public authorities (which includes the governing bodies of maintained schools) carry out their duties, why they make the decisions they do and how they spend public money. Along with Human Rights and Data Protection legislation, Freedom of Information aims to build a culture of rights and responsibilities for citizens.
79. The FOIA is overseen by the IC and the ICO. Their FOI duties are to: promote good practice; give advice and guidance; enforce compliance and investigate complaints; report

to Parliament on compliance; approve publication schemes; and publicise the Act. Both the IC and the Department for Constitutional Affairs (DCA) have produced guidance on FOIA, including two Codes of Practice providing guidance to public authorities generally on the implementation of the Act and on records management.

80. 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 www.dca.gov.uk/foi/codepafunc.htm
81. The IC also has responsibility for [The Data Protection Act 1998](#) and [The Environmental Information Regulations 2004](#). The Data Protection Act 1998 (or DPA) enables individuals to access information about themselves. The Environmental Information Regulations 2004 (or EIRs) enable people to access environmental information.
82. 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.
83. Any request for information made in writing to a school since 1 January 2005 is either a request under the Freedom of Information Act, environmental legislation, the Data Protection Act, or a combination of any of them.

Right to request information

84. 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](#) (SI: 2004/3364) which excludes days which are not school days from the 20 working day period.
85. 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 not covered by the [Data Protection Act 1998](#) (i.e. from individuals to see their own personal information) or [Environmental Information Regulations 2004](#) are covered by the FOIA.
86. 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.
87. From 1 January 2005, there will only be 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.
88. 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 DfES at www.teachernet.gov.uk/management/atoz/f/freedomofinformationforschools

89. 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. These include:

- information accessible by other means, for example information available from your publication scheme, or information that other legislation requires you to give;
- personal information;
 - i) a request for personal information covered by the DPA (individuals may continue to make a “subject access request” under the DPA – these are where the enquirer asks to see what personal information the school holds about themselves);
- environmental information.
Environmental Information Regulations 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 etc. More guidance on the Environmental Regulations can be found on the IC’s website at www.informationcommissioner.gov.uk/eventual.aspx?id=36, or on DEFRA’s website at www.defra.gov.uk/corporate/engov/eir/index.htm

These are the exemptions most likely to be used by schools.

90. 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?

91. School governing bodies are responsible for ensuring a school complies with FOIA. The new legal presumption of openness since January 2005 makes it more important than ever that a school decides its policies and conducts its day-to-day operations on a basis that stands up to public scrutiny.

92. 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.

93. Since requests for information can be directed to the school through anyone who works there, the governing body should ask itself whether all 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 Regulations made under the FOIA. (See [The Freedom of Information and Data Protection \(Appropriate Limits and Fees\) Regulations 2004](#) (SI: 2004/3244).) Guidance on charging can be found at www.teachernet.gov.uk/

94. 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 DfES recommends that schools respond to straightforward requests for free and charge where the costs are significant;
- delegate to the headteacher the day-to-day responsibility for FOI policy and the provision of advice, guidance, publicity and interpretation of the school’s policy;

- consider designating an individual with responsibility for FOI to provide a single point of reference; co-ordinate FOIA and related policies and procedures; take a view on possibly sensitive areas; and consider what information and training staff may need. For a generic PowerPoint presentation visit www.teachernet.gov.uk/management/atoz/ff/freedomofinformationforschools
- consider arrangements for overseeing access to information and delegation to the appropriate governing body committee;
- ensure that a well-managed 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.

95. Publishing a disclosure log is considered good practice and, over time, can be useful in providing a steer to the school's publication strategy, in that it can highlight 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.

96. On receipt of a request for information the school should:

- decide whether the request is a request 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.

Further help and other sources of information

97. Full guidance for schools, a PowerPoint presentation, retention schedule and electronic copies of relevant leaflets are available on the GovernorNet and TeacherNet websites at www.governornet.gov.uk and www.teachernet.gov.uk

The DCA leads on FOI. For further information visit www.dca.gov.uk/foi

The site includes a Code of Practice on the Discharge of Functions of Public Authorities and a Code of Practice on the Management of Records.

The IC is the independent authority responsible for administering and enforcing the Act. For more information visit www.informationcommissioner.gov.uk

THE LAW

N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up to

date list of legislation applying to schools, please refer to the GovernorNet website
www.governornet.co.uk

[Disability Discrimination Act 1995: Section 28D](#)

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

[Education Act 2002 Section 30A](#), as inserted by the [Education Act 2005](#) Section 104

School Standards and Framework Act 1998: [Section 61](#) (behaviour and anti-bullying policy), [Section 92](#) (publication of information about admissions), Sections [110](#) and [111](#) (home-school agreements)

[Data Protection Act 1998](#)

[Education Act 2002: Section 30](#)

[Education \(School Curriculum and Related Information\) Regulations](#): SI 1989/954 (as amended by [1989/1136](#), [1990/1109](#), [1992/1089](#))

[Education \(Further Education Institutions Information\) \(England\) Regulations](#):

SI 1995/2065 (as amended by SI [1997/2173](#) and SI [1998/2220](#))

[Education \(School Information\) \(England\) Regulations](#): SI 2002/2897 (as amended by SI 2005/2152)

[Education \(School Performance Information\) \(England\) Regulations](#): SI 2001/3446 (as amended by [2002/2017](#) [SI 2003/2135](#) [SI 2004/1377](#) [SI 2004/2141](#))

[Education \(School Sessions and Charges and Remissions Policies\) \(Information\) \(England\) Regulations](#) SI: 1999/2255

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

[Data Protection \(Subject Access Modification\) \(Education\) Order](#): SI 2000/414

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

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

GUIDANCE

DfEE booklet: Home-School Agreements Guidance for Schools, Ref PPY984

QCA booklets :

Assessment and Reporting Arrangements Key Stage 1 2006

Assessment and Reporting Arrangements Key Stage 2 2006

Assessment and Reporting Arrangements Key Stage 3 2006

14 INSPECTION

CHAPTER SUMMARY

When a governing body is notified of a “Section 5” school inspection, it must notify parents and others about the inspection.

The governing body of a voluntary or foundation school designated as having a religious character must arrange a separate inspection of collective worship and any denominational education.

In both inspections, once the inspection is complete and the governing body has received a copy of the inspection report, it must send copies to parents, make a copy available for inspection by members of the public and provide a copy to any person who asks for one.

BACKGROUND

1. Inspection is intended to help schools to improve by highlighting their strengths and weaknesses, providing them with recommendations for improvement and promoting a culture of rigorous self-evaluation. Through the publication of inspection reports it also provides information to parents and the wider community about the quality of education and whether pupils are achieving as much as they can.
2. All maintained schools are subject to regular inspections by Ofsted around every three school years (Section 5 inspections). The frequency of inspections within that period depends on the circumstances of individual schools, with the most effective schools generally having the longest interval between inspections. The scope of Section 5 inspections is defined by statute and is set out in more detail in the *Framework for the inspection of schools in England from September 2005*, which is published by Ofsted.
3. In addition to the regular programme of Section 5 inspections, Ofsted inspects schools for a variety of reasons, such as to gather evidence for reports and advice on curriculum subjects; specific themes and initiatives, for example literacy and numeracy in primary schools; and to monitor improvement in schools causing concern. Inspectors have a right of entry to schools and a right to access information held by schools to undertake this work.
4. Ofsted is a non-ministerial government department headed by Her Majesty’s Chief Inspector of Schools in England (the Chief Inspector). The Chief Inspector is responsible for ensuring that the programme of school inspections is carried out. He or she uses Her Majesty’s Inspectors (HMIs) and Additional Inspectors (AIs) to carry out these inspections. Most AIs are employed by, or work under contract to, external contractors (inspection service providers).
5. The Chief Inspector is required to publish details of the qualifications or experience required of AIs, the standards that they are required to meet and the skills they must demonstrate in carrying out inspections. The contracts that the Chief Inspector enters into with inspection service providers require that they ensure that AIs meet those published requirements. The Chief Inspector publishes, at intervals of not more than 12 months, the names of inspectors given to him or her by the inspection service providers that they intend using.
6. HMIs quality assure inspections in addition to the inspection providers’ own quality assurance arrangements to ensure that they meet the Chief Inspector’s requirements.

All LA's must carry out an inspection to the satisfaction of HMIs before they can participate in a Section 5 inspection without the supervision of HMIs.

BEFORE AN INSPECTION

7. There is no statutory requirement for advance notification of an inspection. However, most schools will receive two days' notice. The headteacher will be contacted by the inspection service provider and informed that the inspection will be taking place. The headteacher is expected to pass this information on to the governing body. The lead inspector will then contact the headteacher or next most senior staff member to discuss the inspection arrangements. Where Ofsted considers it appropriate, inspections may be conducted without notice. This may happen where, for example, there are concerns about the safety or well-being of pupils at the school.
8. Inspectors should not have any connection with the school, its staff or governors that might reasonably raise doubts about their ability to act impartially in relation to the school. Any concerns about this should be raised immediately with the lead inspector or inspection provider.
9. Where notice of a Section 5 inspection is given, the governing body must take reasonable steps to notify:
 - registered parents of registered pupils at the school regarding the time of the inspection and invite parents to inform inspectors of their views about the school (Ofsted will provide a standard letter in a range of community languages for this purpose);
 - the Local Authority (LA);
 - whoever appoints the foundation governors in voluntary schools, and for voluntary aided schools, the diocesan authority (if different);
 - any appropriate officer of the LA where a registered pupil is looked after by the LA;
 - the local Learning and Skills Council (LSC) for secondary schools.
10. The lead inspector is likely to ask for a room to be made available during the inspection where the inspection team can meet in private, but if that would cause undue disruption to pupils and/or staff, the lead inspector must make other arrangements.
11. Inspectors will already have had access to a copy of the school's Self-Evaluation Form (SEF), the Performance and Assessment report (PANDA) and the report from the previous inspection. At the start of the inspection the school may be asked to provide one copy of each of the following documents (where these are not available on the school's website):
 - the current improvement or management plan
 - the school's timetable
 - a plan of the school.

Schools should neither arrange lessons or other activities specifically for the inspection, nor cancel or reschedule any activities because of the inspection, and inspectors cannot require them to do so.

DURING AN INSPECTION

12. The time an inspection takes depends on the size and nature of the school, but inspections will not last longer than two days.
13. The governing body and staff of the school must give the inspectors access to relevant documents and records (including those on computers) and access to lessons and school activities. The focus of the inspection will be on the school's core systems and key outcomes, informed by self-evaluation evidence and first hand observation, discussion and analysis. Inspectors must be allowed to talk to individuals and groups of staff, pupils and

available governors to enable them to carry out the inspection effectively. Deliberately obstructing a member of the inspection team is an offence.

14. Inspectors are required specifically to have regard to any views expressed to them by governors, the headteacher, staff, pupils, parents and others that are notified of the inspection.
15. Inspectors should offer oral feedback to teachers and other staff about the work they see. They should also provide feedback to the headteacher on emerging findings at regular intervals throughout the inspection. Shortly after the inspection finishes, the senior management team (and where possible a representative from the governing body) should be given oral feedback. The feedback session should provide a firm basis for staff and governors to begin to prioritise and integrate key areas for action within the school's existing improvement/management plan. The feedback should be regarded as confidential and the inspectors' findings should not be released to parents or others until the report is available.
16. HMIs may visit the school during an inspection for the purposes of quality assurance.

THE INSPECTION REPORT

17. Inspection reports will normally be sent to the school within two weeks of the end of the inspection. The school will be shown the report in draft form and have an opportunity to comment on it. Ofsted must ensure that a copy of the final report is sent to the governing body; the headteacher; the LA; those who appoint the foundation governors and the appropriate appointing authority, if different; and the LSC, if the school has a sixth form. The main findings of the report will reflect the inspection team's judgement on:
 - the quality of education;
 - how the needs of the range of pupils are met;
 - the educational standards;
 - the leadership and management, including management of financial resources;
 - the spiritual, moral, social and cultural development of pupils;
 - the school's contribution to the well-being of its pupils.
18. When it receives the report, the governing body must arrange for:
 - the parents of all pupils to be sent a copy of it within five working days;
 - the report to be made available to any member of the public who wishes to see it, at such times and place as may be reasonable;
 - copies of the report to be provided to anyone who asks (charges may be made, provided these are not greater than the cost of copying).
19. Governing bodies may wish to consider placing copies of the report 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
20. The governing body should also consider translating the report into other languages where appropriate.

SCHOOLS CAUSING CONCERN

21. Details of the arrangements for all types of school causing concern are set out in the Department for Education and Skills's (DfES's) guidance *Schools Causing Concern 2005*, available on the Standards Site at www.standards.dfes.gov.uk/sie/si/SCC

There are two categories of schools causing concern that are identified through inspection.

- A school requires special measures where it is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school.
 - A school requires significant improvement where, although it does not require special measures, it is nevertheless performing significantly less well than it might in all respects reasonably be expected to. Schools may require significant improvement in relation to their main school or their sixth form.
22. All inspections that identify that special measures or significant improvement are required are subject to moderation by Ofsted. When a draft report of an inspection identifies either of these is required, the governing body will be given five working days to comment on this draft before the report is finalised. A report that concludes that a school requires special measures must be personally authorised by the Chief Inspector.
23. Schools requiring special measures or significant improvement are expected to update their school development or improvement plans in the light of the inspection findings. In the case of a school requiring special measures, the action proposed should be devised with the intention of removing the school from that category as soon as possible, and in any event, within two years. There is no requirement to send the amended plan to Ofsted, but the school should be prepared to share the latest version of this plan with inspectors conducting monitoring visits or other inspections.
24. The LA must prepare a statement of action within 10 working days of receiving a report that states that a school requires special measures or significant improvement. The authority must send a copy of this to Ofsted, and in the case of voluntary aided schools, the person who appoints the foundation governors and the appropriate appointing authority (if different).
25. LAs and the Secretary of State for Education and Skills have intervention powers to tackle the problems of schools requiring special measures or significant improvement. LAs also have powers to tackle problems in schools that have been the subject of a formal warning and where the governing body has not complied with that formal warning. LAs may appoint additional governors and/or suspend the school's delegated budget. They may also seek approval from the Secretary of State for Education and Skills to replace the governing body of a school with an Interim Executive Board (IEB) where the use of other intervention powers has not resulted in the school making sufficient progress, and they consider that the governing body is incapable, even with support, of turning the school around (see chapter 22 of this Guide on Interim Executive Boards). LAs may also publish proposals to close a school that requires special measures and open a new school in its place. This may be known as a "Fresh Start School".
26. The Secretary of State for Education and Skills has powers to appoint additional governors to a school requiring special measures at any time and to replace the governing body of a school with an IEB where he or she is satisfied that the governing body is actively obstructing progress. He or she may direct an LA to take an external partner for advice, where it appears that an LA is unlikely to be able to remedy deficiencies in a school, or has a disproportionate number of schools in special measures or in need of significant improvement. The Secretary of State for Education and Skills may also give a direction to the LA that a school requiring special measures should be discontinued on a given date. He or she may consider using this power if it is unlikely that the LA will ensure rapid improvement and is unwilling to consider closure of the school.

- VA 27. Diocesan or other appropriate appointing bodies have powers to add additional governors at voluntary aided schools, if the LA has done so, where a school has been judged to require significant improvement or not complied with a formal warning. The number of new foundation governors may be equal to the number added by the LA. If a school has been placed in special measures, the appropriate authority may appoint as many additional governors as they think fit, whether or not the LA has done so.
28. Schools placed in special measures will receive monitoring visits normally on a termly basis. The school will be encouraged to provide its most recent self-evaluation evidence. On monitoring visits HMIs will judge progress as well as whether or not the school should be removed from special measures. Schools should keep parents informed of the progress being made. Monitoring visit reports are published on Ofsted's website. If a school remains subject to special measures after two years it will receive a further inspection. The judgement in the published report may remove the special measures designation, renew it, or substitute a judgement that it requires significant improvement.
29. A school identified as requiring significant improvement will be expected to improve its performance significantly within 12 months of the inspection. All schools, including those where the sixth form requires significant improvement, will be re-inspected after one year, but will not receive interim monitoring visits. The inspection report may remove the designation or substitute a judgement that the school requires special measures.

INSPECTING RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP

30. The governing body of a voluntary or foundation school that has been designated by the Secretary of State for Education and Skills as having a religious character is responsible for securing that the content of the school's act of collective worship and any denominational religious education provided for pupils is inspected every three years (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 to also cover the spiritual, moral, social and cultural development of pupils at the school.
31. The contractual arrangements, including fees (a grant is available from the DfES towards this cost), are a matter for the governing body. When choosing an inspector for the Section 48 inspection, the governing body, or in the case of a voluntary controlled school, the foundation governors, must consult one of the following bodies shown in the table, below.

School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	The Jewish Studies Education Inspection Service
Methodist	The Education Secretary to the Methodist Church
Muslim	The Association of Muslim Schools
Sikh	The Network of Sikh Organisations
Seventh Day Adventist	The Education Department of the British Union Conference of the Seventh Day Adventist

32. 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.

33. 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.

THE LAW

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

The [Education Act 2005](#), the [Education Act 2002](#) and the [School Standards and Framework Act 1998](#)

[The Education \(School Inspection\) \(England\) Regulations 2005](#): SI 2005/2038

GUIDANCE

DfES publications:

Guidance: Schools causing concern, published September 2005
www.standards.dfes.gov.uk/sie/si/SCC

Ofsted publications include:

Framework for the inspection of schools in England from September 2005, published July 2005 (website only – ref HMI 2435)

Conducting the inspection: Guidance for inspectors of schools, published July 2005 (website only – ref HMI 2502)

Using the evaluation schedule: Guidance for inspectors of schools, published July 2005 (website only – ref HMI 2504)

Inspections from September 2005 information leaflet: school inspections, published July 2005 (website only – ref HMI 2500)

Inspections from September 2005 information leaflet: school improvement inspections, published July 2005 (website only – ref HMI 2498)

Inspections from September 2005 information leaflet: subject and survey inspection, published July 2005 (website only – ref HMI 2489)

Inspections from September 2005 information leaflet: complaints about school inspection, published July 2005 (website only – ref HMI 2488)

Priced Ofsted publications are available from the Stationery Office (tel: 0870 600 5522).

Other Ofsted publications are available from Ofsted's publications centre (tel: 0700 263 7833 or email: freepublications@ofsted.gov.uk).

All Ofsted publications can be accessed from their website: : www.ofsted.gov.uk

15 HEALTH, SAFETY AND WELFARE

CHAPTER SUMMARY

This chapter explains health and safety in schools, which is governed by legislation enforced by the Health and Safety Executive (HSE).

PUPIL HEALTH AND SAFETY

1. Health and safety responsibilities derive from the Health and Safety at Work etc. Act 1974 and the associated [Management of Health and Safety at Work Regulations 1999](#). Pupils are protected by this law because they are affected by an employer's undertaking. The legislation is based on the duty to assess and manage risk and is usually enforced by the Health and Safety Executive (HSE).

Who is responsible for pupil health and safety?

2. The employer has the ultimate responsibility for pupil health and safety. Who this is varies with the type of school. The employer is:
 - the local authority (LA) in community schools including special schools, voluntary controlled schools, maintained nursery schools and pupil referral units;
 - the governing body in foundation schools, foundation special schools and voluntary aided schools. In these schools the governing body takes over the responsibilities and functions of the LA.
3. The employer must ensure, as far as is reasonably practicable, the health and safety of pupils on school and on off-site visits. The employer must have a health and safety policy and arrangements to implement it. Key elements of a policy are listed in *Health and Safety: Responsibilities and Powers* (Department for Education and Skills (DfES) 2001). The employer must assess the risks of all activities, introduce measures to manage those risks and tell their employees about the measures.
4. Employees in any kind of school must:
 - take reasonable care of their own and others' health and safety
 - co-operate with their employer
 - carry out activities in accordance with training and instructions
 - inform the employer of any serious risk.
5. The employer, whether LA or governing body, has the power to ensure that its health and safety policy is carried out. They must provide health and safety guidance to the school and ensure that staff who are delegated tasks, such as risk assessment and risk management, are competent to carry them out. If risk assessment shows training is needed the employer must make sure this takes place. The employer cannot fulfil its statutory duty unless it monitors how its policy is being complied with by its school or schools.
6. An LA has no responsibilities for, and no power to intervene in, pupil health and safety in schools where the governing body is the employer, except where safety (not health) is threatened by, for example a breakdown in discipline. See *Health and Safety: Responsibilities and Powers* (DfES 2001).

Governing bodies that are not employers

7. A governing body that is not the employer may choose to undertake risk assessment duties if it has appropriate competence, or to otherwise ensure that health and safety tasks are undertaken according to guidance and that the employer's policy is followed. Even if not employers, governing bodies must take reasonable steps to make sure that the school buildings, equipment and materials are safe and do not put the health of persons at risk whilst they are on the premises. Together with the headteacher, the governing body must comply with any directions given by the LA concerning the health and safety of persons in school or on school activities elsewhere.

ENFORCEMENT OF HEALTH AND SAFETY

8. Because the employer is responsible for health and safety in the workplace and on work activities, the HSE will normally consider action against the employer when something has gone seriously wrong as a result of neglect. However, in some circumstances, for example where an employee failed to take notice of the employer's policy or directions in respect of health and safety, the HSE may take action against the employee as well or instead.

Accidents to pupils – reporting and recording

9. Schools must report to the HSE and record any work-related injury that leads to a pupil being taken to hospital. This includes some acts of violence. *RIDDOR Explained* is available, with a report form, from the HSE. [The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995](#) (RIDDOR) apply.
10. Employers with 10 or more employees must keep accident records for three years for social security purposes. It is also good practice to record all accidents that befall pupils. *See Guidance on First Aid for Schools* (DfES 1998).

DISABILITY DISCRIMINATION ACT (DDA) 1995 (AS AMENDED BY THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001)

11. In brief, under Part 4 of the [DDA 1995](#) schools (and LAs) are required to:
 - not discriminate against disabled people in their access to education for reasons relating to their disability; and
 - plan to increase progressively, and over time, access to schools by disabled pupils and prospective pupils.
12. Nothing in the DDA takes precedence over any other statutory duties that responsible bodies (such as the governing body of a school) might have. In carrying out their duties under Part 4 of the DDA, governors must ensure that they comply with all other legal requirements upon them. However, the existence of other legislation does not provide an automatic defence in a case under Part 4 of the DDA. Governors are expected to take whatever action is necessary to ensure that they fulfil their responsibilities both under the DDA and under any other legislation that applies to them.
13. With regard to the Health and Safety at Work Act 1974 and related Regulations, the DDA does not require governors to place employees or pupils at an inappropriate risk if a health and safety issue arises. However, changes to policies and procedures and/or the provision of training may mitigate any health and safety risks that arise in relation to disabled people or pupils. The risk assessment process carried out to comply with health and safety legislation may provide an opportunity to consider adjustments required by the DDA.

EDUCATIONAL VISITS AND OFF-SITE ACTIVITIES INCLUDING ADVENTURE ACTIVITIES

14. Governors should be aware of the DfES's good practice guidance on educational visits (see below). This includes the functions expected of the school's Educational Visits Co-ordinator (EVC).
15. The governing body should also be aware of the [Adventure Activities Licensing Regulations 2002](#), which control the provision to schools of certain adventure activities. Commercial or LA providers must hold a licence. Guidance on planning visits, carrying out visits and standards for adventure is listed below.
16. It is good practice for a school's EVC to use the services of a licensed provider when contemplating adventure activities (though some schools may include an employee with considerable specialised expertise). The Adventure Activities Licensing Authority was appointed by Parliament to inspect and license, on behalf of the Government, all commercial provision of climbing, caving, waterborne and trekking activities to schools. Firms contracting with schools to provide licensable activities without a licence are in breach of the law. The [Activity Centres \(Young Persons' Safety\) Act 1995](#) and the [Adventure Activities Licensing Regulations 2004](#) (was 1996) apply. See also *Health and Safety of Pupils on Educational Visits: A Good Practice Guide* (DfES 1998).
17. The role of governors is set out in Standards for LAs in Overseeing Educational Visits (DfES 2002). Governing bodies that are employers also assume the role of the LA.

Seat belt wearing

18. Seat belt wearing in minibuses has been mandatory since 1993. New Regulations will come into force by 1 February 2006, subject to Parliamentary approval, amending the [Motor Vehicles \(Wearing of Seat Belts\) Regulations 1993](#) and requiring compulsory seat belt wearing by all passengers seated in larger coaches and buses where a belt is provided.

Seat belt provision

19. If three or more pupils are being carried on an organised excursion they must be provided with a forward-facing seat equipped with a restraint. From 1 October 2001 seat belts have been required in the forward and rearward facing seats of all new minibuses, coaches and buses, apart from those specifically designed for urban use with standing passengers.

Minibus driving

20. In most circumstances, minibus drivers must hold a D1 PCV (Passenger Carrying Vehicle) licence. However, school staff who hold a car (Class B) licence can legally drive a school minibus without a D1 PCV licence as long as certain conditions are met. The most significant requirement is that staff are not specifically remunerated for driving, through their contract of employment or otherwise. The full conditions are: the driver is 21 or over and has held a car driver (B) licence for not less than 2 years; the vehicle is being used by a non-commercial body for social purposes but not for hire or reward; the minibus driver receives no consideration for driving other than out of pocket expenses; the minibus weighs no more than 3,500 kg; no trailer being towed.
21. It would, nonetheless, be bad practise for school staff to drive the minibus solely on the basis that they held a Class B licence for 2 years. There are a range of good practice options for further training, including training for the PCV test, for a MiDAS Certificate, RoSPA and other courses as established by employers and others to secure a high level of competence for incidental minibus drivers.
22. The statutory risk assessment process should help an employer choose which good practice option is most appropriate.

Amendment 1
May 2006

Amendment 1
May 2006

Amendment 1
May 2006

Three for two

23. The Public Service Vehicles (Carrying Capacity) Regulations 1984 allow (when practical) three children under the age of 14 to occupy a bench seat normally used for two passengers. The use of this ruling is often perceived as causing overcrowding on buses and coaches and as such is thought to reduce the safety of passengers using the vehicles.
24. It should be stressed that this is a concession and not a requirement. It is therefore up to the individual LAs whether to use this when planning transport provision. With the advent of modern buses (particularly those with shaped seats in which it would not be possible to seat more than two) and the increased use of seat belts, which when fitted do not permit the use of this option, the uptake of three for two will steadily decline. We understand that very few LAs use this concession when planning transport provision to schools.

FIRST AID

25. The Health and Safety (First Aid) Regulations 1981 set out the requirements relating to employees. We recommend that schools treat pupils as if they were employees for the purposes of first aid and provide first aid materials and expertise as appropriate based on risk assessment.

LITTER

26. Under [Section 89 of the Environmental Protection Act 1990](#) governing bodies must keep land that is under their control and is open to the air free from litter, refuse and dog excrement so far as is practicable. Schools sometimes use pupils to collect litter to keep the school clean and to improve awareness of the environment. It is good practice not to do this without parental consent.

CURRICULAR: KEY STAGE 4 USE OF LOW-LEVEL RADIOACTIVE SUBSTANCES

27. The Department proposes to abolish the requirement to obtain the consent of the Secretary of State before acquiring radioactive materials. The consultation on this closes end of May 2006 and is available on the teachernet website.

MANAGING MEDICINES

28. Individual schools should develop policies to cover the needs of their own school. The governing body has general responsibility for all of the school's policies even when it is not the employer. The governing body should take account of the views of the headteacher, staff and parents in developing a policy on assisting pupils with medical needs. Where the LA is the employer, the school's governing body should follow the health and safety policies and procedures produced by the LA.
29. Teachers and most school support staff are not legally required to manage a child's medicine. Where possible schools and their employers should consider employing sufficient numbers of support staff who are contracted to manage medicines.
30. Where staff manage medicines (whether as part of their contract of employment or else voluntarily), they should be appropriately trained and insured. With the exception of maintained community schools, employers must take out Employers Liability Insurance to provide cover for injury to staff acting within the scope of their employment. LAs may choose instead to "self-insure" although in practice most take out Employers Liability Insurance.

31. In the event of legal action over an allegation of negligence, the employer rather than the employee is likely to be held responsible. Employers should therefore make sure that their insurance arrangements provide full cover in respect of actions that could be taken by staff in the course of their employment.
32. It is the employer's responsibility to make sure that proper procedures are in place and that staff are aware of the procedures and are fully trained. Keeping accurate records is helpful in such cases. All staff are expected to use their best endeavours at all times, particularly in emergencies. In general, the consequences of taking no action are likely to be more serious than those of trying to assist in an emergency.

Prescribed medicine

33. We advise that schools should only agree to manage prescribed medicine where it is absolutely essential to do so, for example where it would be detrimental to a child's health if they did not have access to their medicine during the school day. Where schools agree to manage prescribed medicine it must be in the original packaging with the prescriber's instructions. Repackaged or relabelled medicine should not be accepted.

Non-prescribed medicines

34. Schools should never manage a non-prescribed medicine without prior consent from a parent. Schools and their employers should consider under what circumstances schools may manage non-prescribed medicine.
35. Schools should be aware that the [Special Educational Needs and Disability Act 2001](#) amended [Part 4 of the Disability Discrimination Act 1995](#) making it unlawful for schools and LAs to discriminate against disabled pupils for reasons relating to their disability, without justification. This might include some children with long-term medical needs.

SCHOOL MEALS AND MILK

Provision of meals

36. The LA or governing body may provide meals or other refreshments to pupils either on the school premises or elsewhere where education is being provided.

"Paid-for" lunch service

37. A duty requiring LAs and governing bodies to provide "paid-for" lunches where parents request them was introduced from April 2001.

Governing bodies' duties that arise from the delegation of funding for school meals

38. From April 2000, funding for school meals was delegated to all secondary schools. Primary and special schools can opt for delegation. Where a school has a delegated budget for meals the governing body takes on the responsibility for their provision. This includes, for example providing free school meals to eligible pupils, providing paid-for meals where requested, complying with the requirements of the nutritional standards for school lunches Regulations, and deciding the content and cost of meals.

Free meals (lunches)

39. Where a request by or on behalf of a pupil is made, the LA or (where the budget for school meals is delegated to them) a school's governing body must provide a free meal for pupils whose parents receive:

- Income Support;
- Income-based Jobseeker's Allowance;
- Support under [Part VI of the Immigration and Asylum Act 1999](#)
- Child Tax Credit (providing that they are not also entitled to Working Tax Credit and have an annual income, assessed by the Inland Revenue, that does not exceed £14,155 in the financial year 2006–7); or
- Guarantee element of State Pension Credit.

Children who receive Income Support or Income-based Jobseeker's Allowance in their own right are also entitled to free school meals.

Children receiving nursery education

40. The Education [\(School Lunches\) \(Prescribed Requirements\) \(England\) Order 2003/382](#) sets out an additional requirement for any children who receive "education suitable for children who have not attained compulsory school age". These children need to be "receiving education both before and after the lunch period" before being eligible to receive free school meals or a "paid-for" meal. This requirement was introduced from April 2003.

Nutritional standards

41. All school lunches must meet the minimum requirements set out in the [Education \(Nutritional Standards for School Lunches\) \(England\) Regulations 2000](#) Statutory Instrument No. 1777/2000. Where a school has a budgetary element for school meals delegated to it, the duty to ensure that lunches provided meet with these standards is transferred to the governing body of the school. The Regulations, which came into force on 1 April 2001, are available on the Office of Public Sector Information website at www.opsi.gov.uk/legislation

42. Additional guidance to assist with the implementation of the standards is available on the DfES website at www.dfes.gov.uk/schoollunches

43. Subject to meeting with the requirements of the nutritional standards Regulations, the LA or governing body decides the content, presentation, and cost of school food, and where there is a cash cafeteria system, sets the standard meals allowance for those entitled to free meals. All other pupils are to be charged the same amount for the same quantity of the same item, although the meals may be subsidised. School lunch standards are currently under review and the new standards will be available, in draft form, from May 2006.

Facilities for pupils not eating school meals

44. The LA or governing body must provide facilities for pupils not taking school meals to eat meals that they bring to school. The LA can decide what facilities are appropriate. However, it is considered that facilities would include accommodation, furniture and supervision so pupils can eat food they have brought from home in a civilised way and in suitable conditions. The school cannot charge pupils for using these facilities.

45. The governing body must allow the LA to use the facilities at a school to enable it to provide school meals according to its policy.

Milk

46. LAs and governing bodies are not obliged to offer milk to pupils. However, where LAs choose to do so, it must be provided free of charge to pupils whose parents receive:
- Income Support;
 - Income-based Jobseeker's Allowance;
 - Support under [Part VI of the Immigration and Asylum Act 1999](#);
 - Child Tax Credit (providing that they are not also entitled to Working Tax Credit and have an annual income, assessed by the Inland Revenue, that does not exceed £14,155 in the financial year 2006–7); or
 - Guarantee element of State Pension Credit.
47. The duty to provide milk free of charge to eligible pupils is transferred to the governing body of former grant-maintained schools and grant-maintained special schools in England. See [The Education \(Transfer of Functions Concerning School Lunches etc.\) \(England\) \(No.2\) Order 1999](#).
48. European Union (EU) subsidy rules allow LAs and schools to offer nursery and primary school pupils a maximum of 250ml of subsidised milk a day for drinking. The EU School Milk Subsidy Scheme is administered by Rural Payments and any claims should be made through the LA.
49. Under the Department of Health's (DH's) Welfare Food Scheme (WFS) day carers in Great Britain, including nurseries and childminders, may claim reimbursement for providing free milk to children in their care for two or more hours a day. The WFS will be replaced by a new initiative called Healthy Start, to be phased in from late 2005. Healthy Start will allow nurseries to claim payment for providing children with either milk or fruit daily. Claims should be made through the LA.

SCHOOL UNIFORM

50. There is no legislation that deals specifically with the wearing of school uniform. It is for the governing body to decide whether there should be a school uniform or not, and if there is, what it should consist of. This is because of the governing body's responsibility for the general conduct of the school. Insistence on wearing a school uniform where the governing body has decided there should be one is for the headteacher to enforce because of his or her overall responsibility for maintaining discipline. However, exclusion from school is not considered an appropriate response.
51. Schools are expected to consult parents wherever possible on school uniform matters and to behave reasonably. They should have regard to religious and cultural differences and to their responsibilities under equality and human rights legislation. They should also be sensitive to parents who may be in financial difficulties.

SAFEGUARDING AND PROMOTING THE WELFARE OF PUPILS – INCLUDING CHILD PROTECTION

52. 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 and Skills when drawing up those arrangements

Section [157 of the 2002 Act](#) and [The Education \(Independent Schools Standards\) \(England\) Regulations 2003](#) that came into force on 1 September 2003 place the same duties on the proprietors of independent schools.

53. 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; drugs and substance misuse, etc. (about which the Secretary of State for Education and Skills has issued guidance). There may also be other safeguarding issues that are specific to the local area or population.
54. Where there are statutory requirements, governing bodies should ensure their school has policies and procedures in place that satisfy those and comply with any guidance issued by the Secretary of State for Education and Skills. Similarly, arrangements about matters on which the Secretary of State for Education and Skills has issued guidance should be evidenced by policies and procedures that are in accordance with that guidance, or achieve the same effect. Governing bodies also need to be able to show that they have considered whether children, including individual children in their area or establishment, have any specific safeguarding needs in addition to those covered by guidance. If so, governing bodies need to be able to show that they have policies and procedures in place to meet those needs.
55. Governing bodies are therefore accountable for ensuring their establishment has effective child protection policies and procedures in place that are in accordance with guidance issued by the Secretary of State for Education and Skills, any LA guidance and locally agreed inter-agency procedures. These should include procedures to follow in dealing with allegations of abuse against members of staff and volunteers who work with children, and safe recruitment procedures, which make sure that all appropriate checks are carried out on new staff and volunteers. However, neither the governing body nor individual governors have 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).
- 55a. Chairs of governing bodies are expected to work with headteachers (unless the allegation concerns the headteacher) and local authority officers to confirm the facts about individual cases and to reach a joint decision on the way forward in each case. Chairs have a crucial role to play in deciding courses of action, including disciplinary action, in those cases where a criminal investigation may not be required. In cases where allegations have been substantiated the Chair should work with the LA designated officer and headteacher to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future. Detailed advice on dealing with allegations against staff was published in November 2005, setting out particular roles for individuals involved in dealing with allegations and setting out indicative timescales for different stages in the disciplinary or criminal process. This advice aims to assist all schools and FE colleges to review and, where appropriate, modify their practice and procedures dealing with allegations of abuse made against teachers and education staff. The guidance "Safeguarding Children in Education: Dealing with Allegations of Abuse Against Teachers and Other Staff" can be downloaded from www.teachernet.gov.uk/childprotection.
56. It is important that school staff do not investigate cases of suspected abuse themselves. That is the responsibility of the police and social services. 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 social services. Schools should co-operate fully with police and LA social services departments in any child abuse investigations.
57. Some governing bodies have found it helpful for an individual member of the governing body to champion child protection issues within the school, liaise with the headteacher about them

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and provide information and reports to the governing body. However, it is not usually appropriate for that person to take the lead in dealing with allegations of abuse made against the headteacher. That is more properly the role of the chair of governors, or in the absence of a chair, the vice-chair. Whether the governing body acts collectively or an individual member takes the lead, it is helpful if all members of governing bodies undertake training about child protection to ensure they have the knowledge and information needed to perform their functions and understand their responsibilities.

58. 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.
59. Advice has been issued to schools, colleges and the education service on the duty under section 175 of the Education Act 2002 for LAs, schools of all kinds, and further education institutions to have arrangements for carrying out their functions with a view to safeguarding and promoting the welfare of children. This guidance is entitled *Safeguarding Children In Education* (DfES/0027/2004).
60. Vetting applicants and prospective volunteers working with children to ensure they are not unsuitable is a very important aspect of child protection. You will find guidance about this in the "Checking Applicants" section of chapter 9 of this Guide (Staffing) and the advice issued to schools entitled *Safeguarding Children: Safer Recruitment and Selection In Education Settings* (DfES/1568/2005).

These guidance documents are available to download from the DfES child protection website at www.teachernet.gov.uk/childprotection

PROVISION OF CHILDCARE AND OTHER INTEGRATED SERVICES IN SCHOOLS

61. 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 in which the school is situated. Such services would include 'daycare' (which simply means providing care for children under 8 other than on domestic premises). From 1 September 2003 daycare for children aged under 8 provided by schools must be registered by Ofsted under [Part XA of the Children Act 1989](#).
62. The requirement to be registered by Ofsted only apply where the primary purpose of the school based provision is daycare. Educational provision, to which daycare is incidental, such as study support, may not require Ofsted registration. Ofsted makes decisions on whether or not registration is required on a case by case basis, following the normal criteria they use for other day care settings, taking into account whether or not care is the primary purpose of the provision. This means that some provisions which a school may regard as childcare, and for which it may charge, does not require registration by Ofsted. In all cases, schools should check with Ofsted to see whether registration is required or not, and should satisfy themselves that the people involved are suitable to operate the provision (and have had Criminal Records Bureau checks, where necessary) and the premises used are suitable for the type of activity on offer. Daycare provision that has to be registered must meet legal requirements on the suitability of people and premises, and must comply with relevant national standards (*the national standards for under eights day care*). Where schools operate daycare provision that does not require registration, they are advised to operate in accordance with these standards even though this is not a legal requirement.
63. Further information about the roles and responsibilities of governing bodies in managing community facilities can be found in chapter 19 of this Guide (Extended schools). Practical guidance and support can also be obtained from your LA.

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SCHOOL SECURITY

64. Governing bodies have a statutory duty to include school security issues in their annual report. Management of school security is usually shared by the LA as employer with the governing body. Funding previously available as ring-fenced funding (£120 million for all maintained schools over a number of years) continues to be available as part of the funds generally allocated to schools who are best placed to decide their priorities. Governing bodies as employers have overall responsibility to make the school secure as part of their health and safety duties. See [school security](#) on the TeacherNet website.
65. Schools have a common law right to bar troublesome adults from the school premises. They have a statutory power under [Section 547 of the Education Act 1996](#) to remove intruders causing a disturbance or nuisance. The LA may authorise someone to remove such a person from a foundation or voluntary aided school with the consent of the governors (as employer).
66. At the time of drafting, the Government is minded to introduce a new power for headteachers to search, with or without consent, a pupil whom they reasonably suspect is carrying a knife or other weapon. This forms a clause in the Violent Crime Reduction Bill which, at the time of drafting, has received a second reading in the Lords.

RIGHTS OF WAY

67. New legislation provides for a right of way across school property to be diverted or extinguished where the safety of pupils or staff is significantly placed at risk. See guidance on rights of way under "[School Security](#)" on TeacherNet.

PLAYGROUND SUPERVISION

68. The DfES does not recommend how many adults should be in charge of pupils during lunch and other breaks. Schools are best placed, on behalf of the employer, to assess the local risks and to put in enough competent supervisors to manage the risks. Parents need to be told at what time the school begins to supervise the children at the start of the school day and the time in the afternoon when the supervision ends.

Duty to report incidents

69. It is important that schools have arrangements for recording and reporting to the police and LA incidents of crime and loss (where appropriate). Under the [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995](#) (RIDDOR), injuries caused by physical violence against a person at work, such as a teacher or self-employed person working on the premises, must be reported to the HSE.

Use of force to control or restrain pupils

70. Governors should be aware of Circular 10/98 on [Section 550A of the Education Act 1996](#): *The Use of Force to Control or Restrain Pupils*, which gives advice on the powers of teachers and other staff who have lawful control or charge of pupils, to use reasonable force to prevent pupils committing a crime, causing injury or damage, or causing disruption. They should also be aware of *Guidance on the Use of Restrictive Physical Interventions for Staff Working with Children and Adults who Display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders* (DfES Ref LEA/0242/2002).

THE LAW

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

Health and safety

The Health and Safety at Work etc. Act 1974

Management of Health and Safety at Work Regulations 1999

www.hmso.gov.uk/si/si1999/19993242.htm

Duty of school governors and headteachers to comply with directions on health and safety from the LA

[Section 29\(5\) of the Education Act 2002](#)

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

[Section 175 of the Education Act 2002](#)

Accidents – reporting and recording

Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995

www.hmso.gov.uk/si/si1995/19953163.htm

Social Security (Claims and Payments) Regulations 1979

Educational visits – adventure activities

[Adventure Activities Licensing Regulations 2004](#): SI 2004/1309

[Adventure Activities \(Enforcing Authority\) Regulations 2004](#): SI 2004/1359

[Activities Centres \(Young Person's Safety\) Act 1995](#)

First aid

The Health and Safety (First Aid) Regulations 1981

Litter

Environmental Protection Act 1990: Sections [89](#), [91](#) and [92](#)

Low-level radioactive sources (for use in the curriculum)

Regulation 7 of the Education (Schools and Further and Higher Education) Regulations 1989: SI 1989/351 www.legislation.hmso.gov.uk/si/si1989/19890351.htm

The Children Act 1989: Sections [27](#) and [47](#)

The Education Act 1996: Sections [512](#) and [542](#)

[The Road Vehicles \(Construction and Use\) \(Amendment\) \(No 2\) Regulations 1996](#): SI 1996/163

[The Public Service Vehicles \(Carrying Capacity\) \(Amendment\) Regulations 1996](#): SI 1996/167

[Education \(School Premises\) Regulations 1999](#): SI 1999/2

GUIDANCE

Health and safety

Health and safety portal for schools on TeacherNet –

www.teachernet.gov.uk/healthandsafety

Health and Safety: Responsibilities and Powers (DfES 2001) –

www.teachernet.gov.uk/responsibilities

Free on request from DfES publications on 0845 602 2260

The Health and Safety Executive (HSE) website – www.hse.gov.uk

HSE free leaflets for the education sector – www.hse.gov.uk/pubns/edindex.htm

HSE free leaflets on risk assessment – www.hse.gov.uk/pubns/raindex.htm

HSE Books has also produced priced documents Managing Health and Safety in schools; Contractors in schools; Health and safety guidance for school governors and members of school boards; and Safety policies in the education sector. See www.hsebooks.co.uk/Books

Accidents – reporting and recording

Guidance on First Aid for Schools – a good practice guide (DfEE 1998) Free on request from DfES publications on 0845 602 2260

HSE Reporting School Accidents – www.hse.gov.uk/pubns

Incident Contact Website (RIDDOR) – www.riddor.gov.uk

Educational visits including adventure activities

Visits guidance on TeacherNet – www.teachernet.gov.uk/visits

Group Safety at Water Margins (DfES and CCPR 2003) A

Handbook for Group Leaders (DfES 2002)

Health and Safety of Pupils on Educational Visits – a good practice guide (DfEE 1998)

Standards for Adventure (DfES 2002)

Standards for LEAs in Overseeing Educational Visits (DfES 2002)

These publications are also available free on request from DfES publications on 0845 602 2260.

The Adventure Activities Licensing Scheme – www.hsebooks.co.uk/Books

First aid

Guidance on First Aid for Schools – a good practice guide – www.teachernet.gov.uk/firstaid is free on request from DfES publications on 0845 602 2260.

HSE First Aid at Work website – www.hse.gov.uk/firstaid/index.htm

Low-level radioactive sources (use in the curriculum)

The Use of Ionising Radiations in Education Establishments in England and Wales – Administrative Memorandum 1/92 is free on request from DfES publications on 0845 602 2260.

Managing pupils' medicines

Managing Medicines in Schools and Early Years Settings (DfES/Department of Health, 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 – Order from DfES Publications at www.dfes.gov.uk/publications

Safeguarding and promoting the welfare of pupils

Safeguarding Children In Education (DfES/0027/2004)

Safeguarding Children: Safer Recruitment and Selection In Education Settings (DfES/1568/2005).

These documents are available from the DfES's website, www.teachernet.gov.uk/childprotection

This site also contains further advice and examples of good practice intended to complement the guidance above.

School security

The DfES's website on school security at www.dfes.gov.uk/schoolsecurity contains information and lists guidance that is available including School Security – Dealing with Troublemakers (DfEE and The Home Office 1997) and Can You See What They See? (DfES video 2001), which are available free on request from DfES publications on 0845 602 2260.

DfEE Guide 4 in the series on Managing School Facilities called Improving Security in Schools, ISBN: ref. 0–11–270916–8

Advice to Users and Operators of Minibuses and Coaches Carrying Children VSE 1/96

Department of Transport Guidance

Advice on retro-fitting Seat Belts to Minibuses and Coaches VSE 2/96, Department of Transport Guidance

Both documents listed above are available from:

Department of Transport
Vehicle Standards and Engineering 6
2/06 Great Minster House
76 Marsham Street
London SW1P 4DR
Fax: 020 7271 4624

Copies are also available from the Department of Transport's homepage at www.open.gov.uk/dot/dot/home.htm

School Transport Safety produced by RoSPA, price £4.95 from:

Publications Department
RoSPA
Cannon House
The Priory
Queensway
Birmingham B4 6BS

Nursery Milk Guide, available from:
The Welfare Food Reimbursement Unit (WFRU)
PO Box 1
Corby
Northamptonshire NN17 1GX
Tel: 0153 640 8008
Useful website: www.schoolmilk.co.uk

16 CHARGING FOR SCHOOL ACTIVITIES

CHAPTER SUMMARY

This chapter explains the legislation governing the charging for school activities as set out in the [Education Act 1996: Sections 449–462](#). It covers what governing bodies 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 incorporated.

EDUCATION DURING SCHOOL HOURS

1. No charge can be made for admitting pupils to maintained schools. Education provided during school hours must be free. This includes materials, equipment, and transport provided in school hours by the Local Authority (LA) or by the school to carry pupils between the school and an activity. “School hours” are those when the school is actually in session and do not include the break in the middle of the school day. It would be good practice for schools to make this information available to parents and others.
2. All three- and four-year-olds are entitled to two and a half free hours of education per day. Schools, including maintained nursery schools, can charge for any additional hours used by the child. A school's governing body can also provide community services and facilities on the school's premises (guidance is available at www.teachernet.gov.uk/extendedschools) and set up a company in accordance with powers for governing bodies set out in Section [27 of the Education Act 2002](#)

EDUCATION PARTLY DURING SCHOOL HOURS

3. Sometimes an activity may happen partly during and partly outside school hours. If most of the time spent on a non-residential activity occurs during school hours, that activity counts as taking place entirely in school hours and no charge may be made. (Time spent on travel only counts as being during school hours if the travel takes place during school hours.)
4. As an example, a long-distance trip might involve much travel before and after normal school hours, but if the time spent at the destination fell mainly within school hours, the trip would count as happening in school time and be free of charge. By contrast, a trip that involved leaving school an hour or so earlier than usual in the afternoon, but then went on until quite late in the evening, would be classified as taking place outside school time. Charges would then be allowed.

EDUCATION OUTSIDE SCHOOL HOURS

5. Parents can only be charged for activities that happen outside school hours when these activities are not a necessary part of the national curriculum or do not form part of the school's basic curriculum for religious education. In addition, no charge can be made for activities that are an essential part of the syllabus for an approved examination (see paragraph 11 on Public examinations).
6. Charges may be made for other activities that happen outside school hours if parents agree to pay. The [Education Act 1996](#) describes activities that can be charged for as “optional extras”. It is up to the LA or governing body providing the activities to decide whether to make a charge.

RESIDENTIAL ACTIVITIES

7. Special rules apply for residential activities. A trip counts as falling within school time if the number of school sessions missed by the pupils amounts to half or more of the number of half-days taken up by the activity. Each school day is normally divided into two sessions and each 24-hour period is divided into two half-days beginning at noon and at midnight.
8. On this basis, a term-time trip from noon on Wednesday to 9.00p.m. on Sunday would last for nine half-days, include five school sessions and would count as taking place in school time. A trip from noon on Thursday to 9.00p.m. on Sunday would count as seven half-days, include three school sessions and would be classified for charging as taking place outside school time. If fifty per cent or more of a half-day is spent on a residential trip, you should treat the whole of that half-day as spent on the trip.
9. If a residential activity takes place largely during school time, meets the requirements of the syllabus for a public examination, or is to do with the national curriculum or religious education, no charge may be made either for the education or for the cost of travel. However, charges can be made for board and lodging in these circumstances except for pupils whose parents are receiving:
 - Income Support;
 - Income-based Jobseeker's Allowance;
 - support under [Part VI of the Immigration and Asylum Act 1999](#) ;
 - Child Tax Credit (providing that they are not entitled to Working Tax Credit and have an annual income, assessed by the Inland Revenue, that does not exceed £14,155 for the year 2006–7); or
 - Guarantee element of State Pension Credit.

The headteacher should advise all parents of the right to claim free activities if they are receiving these benefits.

MUSICAL INSTRUMENT TUITION

10. There is an exception to the rule about not charging for activities in school hours: charges may be made for teaching either an individual pupil, or groups of up to four pupils, to play a musical instrument. 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).

PUBLIC EXAMINATIONS

11. No charges may be made for entering pupils for public examinations that are set out in Regulations. The governing body must enter a pupil for each examination in a public examination syllabus that the school has prepared the pupil for. This does not need to apply if the governing body thinks there are educational reasons for not entering the pupil, or if the pupil's parents request in writing that the pupil should not be entered. The LA may not override the governing body's decision on whether to enter a particular pupil for an examination.

An examination entry fee may be charged to parents if:

- the examination is on the set list, but the pupil was not prepared for it at the school;
- the examination is not on the set list, but the school arranges for the pupil to take it;
- a pupil fails without good reason to complete the requirements of any public examination where the governing body or LA originally paid or agreed to pay the entry fee.

12. Charges may not be made for any cost associated with preparing a pupil for an examination. However, charging is allowed for tuition and other costs if a pupil is prepared outside school hours for an examination that is not set out in Regulations.

ACTIVITIES NOT RUN BY THE SCHOOL OR LA

13. When an organisation acting independently of a school or LA arranges an activity to take place during school hours and parents want their children to join the activity, such organisations may charge parents. Parents must then ask the school to agree to their children being absent, just as they would if they wanted to take their children out of school for a family holiday. However, where an activity is organised by a third party and is approved by the school, is educational, or is supervised by someone authorised by the school, then it is the Department for Education and Skills's (DfES's) view that it should be treated as if it were provided by the school and no charge should be made to the parents or pupils. Such an activity, if it takes place outside the school premises, is an "approved educational activity" within the meaning of [Regulation 4A\(a\) of the Education \(Pupil Registration\) Regulations 1995](#) (as amended).

VOLUNTARY CONTRIBUTIONS

14. Although schools cannot charge for school-time activities, they may still invite parents and others to make voluntary contributions (in cash or in kind) to make school funds go further. All requests to parents for voluntary contributions must make it quite clear that the contributions would be voluntary. Governing bodies should also make it clear that children of parents who do not contribute will not be treated any differently. If a particular activity cannot take place without some help from parents this should be explained to them at the planning stage.
15. Where there are not enough voluntary contributions to make the activity possible and there is no way to make up the shortfall, the activity must be cancelled. The essential point is that no pupil may be left out of an activity because his or her parents cannot, or will not, make a contribution of any kind. The school must first decide which class, or group of pupils, will benefit from the activity and then look for voluntary contributions, either for that activity, or by general fund-raising.

CHARGING POLICIES

16. The LA or governing body may not charge for anything unless it has drawn up a statement of general policy on charging. The governing body's policy may be more or less generous than the LA's, as long as it meets the requirements of the law. A policy statement will take account of each type of activity that can be charged for and explain when charges will be made. If a charge is to be made for a particular type of activity, for example "optional extras", parents need to know how the charge will be worked out and who might qualify for help with the cost (or even get it free). This information should be made available to parents.
17. If a charge is made for each pupil it should not exceed the actual cost. If further funds need to be raised, for example to help in hardship cases, this must be by voluntary contributions or general fund-raising.
18. The permitted charge may include an allowance for the costs of teachers from the school who supervise the activity, but only if those teachers have been given a separate contract to provide the optional extra. A contract need not be a formal document. It could be a simple letter to a teacher asking him or her to provide a service on a particular occasion.

SCHOOL MINIBUSES

19. Only the school's pupils, staff or parents may travel at a charge in a school's minibus.
20. Schools may charge for transport in their minibuses only if they hold a permit issued under Section 19 of the Transport Act 1985. In some cases, the permit exempts the school from Public Service Vehicle (PSV) operator and driver licensing requirements. A permit is not required if no charge is made in cash or kind. Schools should apply to their LA for a permit for each minibus.
21. Schools may not raise funds to make a profit by charging for travel in their minibuses.
22. Charges may 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.
23. Further information is available from LAs or the regional Traffic Commissioners. Addresses may be found in the phone book or at www.vosa.gov.uk

THE LAW

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

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

[The Education \(Prescribed Public Examinations\) Regulations 1989](#): SI 1989/377

[The Education \(Residential Trips\) \(Prescribed Tax Credits\) \(England\) Regulations 2003](#): SI 2003/ 381

[The Education \(Pupil Registration\) Regulations 1995](#): SI 1995/ 2089 (as amended by [The Education \(Pupil Registration\) \(Amendment\) Regulations 1997](#): SI 1997/ 2624, and by [The Education \(Pupil Registration\) \(Amendment\) \(England\) Regulations 2001](#): SI 2001/2802)

GUIDANCE

Passenger transport provided by voluntary groups (Department of Transport) PSV 385 (available free from regional Traffic Commissioners whose addresses may be found in the phone book or at www.vosa.gov.uk)

17 CONTROL AND COMMUNITY USE OF SCHOOL PREMISES

CHAPTER SUMMARY

This chapter explains the governing body's role as controller of the use of premises and how, in certain circumstances, Local Authorities (LAs) can direct the governing body as to how premises should be used. The ability to enter into Transfer of Control Agreements (TofCAs) is covered and explanations are given as to how the governing body must comply with minimum standards for school premises and adhere to special educational needs (SEN) and disability discrimination legislation.

1. At all maintained schools the governing body controls the use of premises both during and outside of school hours. There may be exceptions to this at voluntary aided, voluntary controlled and foundation or foundation special schools if a trust deed says that someone else has control of the use of premises. Also, at community, community special and voluntary controlled schools, the governing body has to follow any general rules (directions) set by the Local Authority (LA) (see paragraph 5). Further exceptions occur with all schools where a Transfer of Control Agreement (TofCA) has been made (see paragraph 22). Governing bodies must be sympathetic to the needs of the local community when deciding out of hours use.
2. Candidates in Parliamentary and local elections have rights to use school rooms for public meetings when they are not being used for educational purposes, or if the premises are not under a lettings agreement. The Returning Officer (the person responsible for organising the election) may use school rooms at any time for an election. The Returning Officer does not have to pay rent but must repay any costs arising. There are currently plans to give equivalent rights of access when voting takes place in a referendum.
3. Different communities use school premises in different ways: for adult education, out of school childcare, sport, and youth clubs, etc. Some schools offer facilities to voluntary organisations.
4. Governing bodies may not use their delegated budget shares to subsidise non-school activities. But governing bodies may charge some organisations more so that the extra funds can be used to subsidise other users. Overall, community use must at least cover its own costs. Profits raised through community use of schools belong to the LA on whose land the profits were made, but LAs may allow schools to keep the income that they generate. Indeed LAs are encouraged to make provisions for this in their Local Management of Schools schemes.
5. The LA can give the governing bodies of community, community special and voluntary controlled schools directions as to how school premises should be used. These directions do not take away the governing body's responsibility, but they can cover matters such as:
 - regular bookings for the youth service or for adult education;
 - security and caretaking;
 - what costs should be covered by charges;
 - the use of a central booking system;
 - making sure that community use of the school's facilities does not affect the day-to-day use of the facilities by pupils, for example by making sure that outdoor sports pitches are not over used.

- VA 6. The LA may give a direction to the governing body of a voluntary aided school as to how the premises should be used on weekdays, for up to three days a week. The LA may do this where it wishes to provide accommodation for the education or welfare of young people, if the LA is satisfied that there is no other suitable accommodation available. When making such a direction, the LA may direct the governing body to provide the accommodation free of charge.
7. Directions given by LAs should be reasonable and not interfere too much with the governing body's control. For example, the LA should not demand that the premises be made available to it if this would force the governing body to break booking agreements.
8. Governing bodies should note that minimum standards for the premises of all maintained schools in England and Wales are contained in the Education (School Premises) Regulations 1999. These cover school facilities, structural and environmental requirements, aspects of health and safety, and the provision of team game playing fields.
9. The [Disability Discrimination Act 1995](#) (DDA) has applied to schools since 1996, in respect of [Part 2](#), Employment and [Part 3](#), Provision of Goods and Services (which had exemptions for education). The Special [Educational Needs \(SEN\) and Disability Act 2001](#) amends the DDA, lifting the exemption for education from Part 3 and provides a new Part 4, Education, including schools from September 2002. The DDA 1995 made it unlawful for any organisation or person that provides a service to discriminate against disabled people.
10. The [SEN and Disability Act 2001](#) introduced new duties on LEAs and schools in relation to disabled pupils and prospective pupils. A person has a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. The two tracts of discrimination are not to treat disabled pupils less favourably and to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage.
11. LAs and schools are required to prepare accessibility strategies and accessibility plans respectively for increasing, over time, the accessibility of schools for disabled pupils. This is known as the planning duty.
12. The accessibility strategy or plan is a strategy or plan for:
- increasing the extent to which disabled pupils can participate in the school curriculum;
 - improving the physical environment of schools to increase the extent to which disabled pupils can take advantage of education and associated services;
 - improving the delivery of written information to disabled pupils that is provided to pupils who are not disabled (this should be done within a reasonable period of time and in formats that take account of views expressed by the pupils or parents about their preferred means of communication).
13. The Act provides for Ofsted inspections of LAs and schools to cover the discharge of their responsibilities to prepare, revise, review and implement their strategies or plans, and in respect of an accessibility plan, the publication of the plan. Ofsted will be monitoring the planning duty through their inspections of LAs and schools. The Secretary of State for Education and Skills can intervene where an LA or school is not complying with the planning duty and can direct an LA or school to do so.
14. The planning duty came into force on 1 September 2002. LAs and schools were required to have their written strategies and plans in place by 1 April 2003. The Regulations prescribe that strategies and plans should run for an initial period of three years, from 1 April 2003 until 31 March 2006 and thereafter on a 3 year rolling basis.
15. Part 3 of the DDA (Rights of Access: Goods, Facilities, Services and Premises) applies to the governing body where, as service provider, it makes the school sports facilities, the

school hall or other school accommodation available for members of the public, or a section of the public, to use. Providers of services must not refuse to provide a service to disabled people, provide it at a lower standard, or offer the service on less favourable terms to disabled people.

16. A person discriminates against a disabled person if, for a reason which relates to a disabled person's disability, they treat him or her less favourably than they treat or would treat others to whom that reason does not or would not apply, and they cannot show that the treatment in question is justified. Any less favourable treatment for a disability-related reason is justified only where, in the landlord's or manager's opinion, one or more "conditions" are satisfied and it is reasonable, given all the circumstance of the case, for him to hold that opinion.
17. The conditions specified in the DDA relate to:
 - health or safety (including that of the disabled person);
 - the disabled person being incapable of entering into a contract;
 - the service provider being otherwise unable to provide the service to the public;
 - enabling the service provider to provide the service to the disabled person or other members of the public;
 - the greater cost of providing a tailor-made service.
18. Since 1 October 1999 providers of services have had to make "reasonable adjustments" for disabled people, such as providing extra help or making changes to the way they provide their services.
19. Since 1 October 2004, service providers have had to make other reasonable adjustments in relation to the physical features of their premises to overcome physical barriers that make it impossible or unreasonably difficult for a disabled person to access their services. However, the DDA recognises the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, service providers are required only to make adjustments that are reasonable given all the circumstances.
20. Factors that may be taken into account in determining what may be reasonable include the cost of the adjustment, its practicability and the extent of the service provider's financial and other resources.
21. Governing bodies, as providers of services, are also subject to Section 20 of the Race Relations Act 1976 and Section 29 of the Sex Discrimination Act 1975.

TRANSFER OF CONTROL AGREEMENTS

22. Governing bodies can enter into agreements called Transfer of Control Agreements (TofCAs). Through a TofCA, a governing body can share control of the school premises with another body or transfer control to it. One of the aims of the Agreement must be to encourage local community use of the premises. The governing body must get the LA's consent before entering into a TofCA that transfers control of the premises during school hours.

THE LAW

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

The Representation of the People Act 1983 (as amended): Sections 95 and 96 and Schedules 1 and 5 – not available on the internet

[Disability Discrimination Act 1995: Part III](#), Rights of Access to Goods, Facilities, Services and Premises

The School Standards and Framework Act 1998: [Section 40](#) and [Schedule 13](#)

(N.B. these remain in force until section 31 of the Education Act 2002 becomes active. This change is not scheduled to take place for the time being.)

GUIDANCE

Accessible Schools (Guidance) Planning to increase access to schools for disabled pupils
Ref: LEA/0168/2002 Issue 8/7/02 available at www.dfes.gov.uk/sen and DfEE Building Bulletin 91: Access for Disabled People to School Buildings

Standards for School Premises, Ref: DFEE 0029/2000, that offers guidance on the Education (School Premises) Regulations 1999

DfEE Circular 3/97: What the Disability Discrimination Act 1995 (DDA) means for schools and LEAs

[Disability Discrimination Act 1995: Code of Practice on Rights of Access to Goods, Facilities, Services and Premises](#)

Disability Rights Commission: Code of Practice for Schools

Education Extra's Good Practice Guide – Successful Education Based Partnerships (DfEE)

Extended Schools – providing opportunities and services for all (DfES 2002)

Lottery Funding: It Could Be Your Good Cause, Department for Culture, Media and Sport (tel: 0207 211 6529)

18 ORGANISATIONAL CHANGES TO THE SCHOOL

CHAPTER SUMMARY

This chapter gives a brief description of how changes are made to the pattern of local school places. It explains who can do what. It is not a comprehensive guide and more detailed advice can be found at www.dfes.gov.uk/schoolorg

1. The pattern or organisation of maintained schools can only be changed after a period of public consultation. This includes the publication of notices allowing formal representations to be made according to a procedure laid down by law and approval by the relevant decision maker. Detailed guidance on the procedures is available at www.dfes.gov.uk/schoolorg but statutory proposals must be published to:
 - set up a new school, whether this is brand new or the result of two or more schools merging;
 - close a school;
 - close one of the sites of a school if the remaining site is one mile or more from the site which is to close;
 - substantially increase the size of a school (usually by twenty-five per cent or more of its capacity unless it is anticipated that the school will revert to its former size within three years);
 - increase the number of pupils by 27 or more in any relevant age group (unless it is a temporary increase for one year only);
 - admit boys and girls instead of one sex only or vice versa;
 - change the age range that the school provides for;
 - add or remove provision intended specifically for pupils with special educational needs;
 - end selective admission arrangements;
 - introduce banding;
 - introduce or end boarding provision;
 - transfer a school from its existing site to another site, either in the same Local Authority (LA) area or in the area of a different LA (unless, in certain limited circumstances, the new site is less than two miles from the current site);
 - change the category of the school.
2. The [Education Act 2005](#) introduced new arrangements for the establishment of a new secondary school. Following a consultation exercise on draft Regulations, it is proposed that from spring 2006, LAs will be required to consult and to publish a notice setting out the need for a new school (or schools) and invite proposals for the school(s) from any interested parties. They will then publish the proposals submitted and invite representations. The local School Organisation Committee (SOC) will then decide which proposals should be approved and if they cannot reach a unanimous decision the Schools Adjudicator will take the final decision. These arrangements will apply in all circumstances where proposals are needed for a new secondary school unless the Secretary of State for Education and Skills agrees they should be exempt.

3. The table below shows who can publish different types of proposals.

Body	Type of proposals
Local Authority (LA)	Community schools – proposals to change category to a foundation school. All proposals apart from proposals to remove selection from a grammar school. Foundation schools – proposals to establish a new school or discontinue or enlarge the premises of an existing school. Voluntary schools – proposals to discontinue a school. Nursery schools – proposals to establish or discontinue a school. Proposals to be relieved of the duty to implement previously approved proposals published by the authority.
Governors of foundation or voluntary schools	Proposals to make a prescribed alteration, including transfer to another site.* Proposals to discontinue the school. Proposals to be relieved of the duty to implement previously approved proposals published by the governing body. Proposals to change the category of the school. (N.B. but not the religious character of the school.)
Governors of community schools	Proposals to physically enlarge a school, increase the number of pupils in any relevant age group by 27 or more, add a sixth form or, where the school is a grammar school, to end selective admission arrangements. Proposals to change the category of the school. (N.B. but not the religious character of the school.) Proposals to be relieved of the duty to implement previously approved proposals published by the governing body.
Promoters	Proposals to establish a new foundation or voluntary school. Proposals to be relieved of the duty to implement previously approved proposals.
Learning and Skills Council (LSC)	Following an Area Inspection or to increase participation and achievement of, and range of learning opportunities for, 16- to 19-year-olds. Community or foundation school – proposals to establish a new 16–19 school. Proposals to discontinue any category of 16–19 school. Community, voluntary or foundation school – proposals to: • add a sixth form or change the age range of a sixth form by a year or more; • close a sixth form; • enlarge a sixth form, or to enlarge a 16–19 school (these proposals will be decided by the Secretary of State for Education and Skills); • discontinue a weak or failing school sixth form (these proposals will be decided by the SOC/Adjudicator).

* Prescribed alteration includes all proposals except those to discontinue a school, establish a school or change the category of a school.

4. A streamlined route is available for community and voluntary controlled secondary schools to change category to foundation. Details are set out in paragraphs 17 and 18, below.
- VA
F 5. The governing body of a voluntary aided or foundation school should normally discuss any reorganisation plans with any diocesan authority, national faith group, charitable trust or foundation to which they are linked at an early stage.
6. Before the LA or governing body publishes proposals for a school it must consult anyone with an interest in the proposals. This should include the governors, parents, school staff and other interested parties (but see Section 3 of the “Decision Makers Guidance” at www.dfes.gov.uk/schoolorg for more details).
7. If the LA or governing body decides to make statutory proposals, it must publish these as a public notice in the area served (or to be served) by the school. Any organisation or individual can object to a proposal.
- VA 8. If the LA, governing body or diocese (in the case of a new voluntary aided school) decides to make statutory proposals, it must publish these as a public notice in the area served (or to be served) by the school. Any organisation or individual can object to or comment on a proposal.
9. Objections to, and comments on, LA proposals must be sent to the LA. Such representations should usually be sent within six weeks of publication of the proposals, although in certain limited circumstances they must be sent within one month. The LA must send any representations it receives, as well as its comments on them, to the local SOC within one month from the end of the representation period, or within two weeks from the end of any shorter representation period.
10. If objections are made to LA proposals, the proposals cannot go ahead without the approval of the SOC or the Schools Adjudicator. If no objections are received, the LA may decide whether to carry out the proposals, but it must make a decision within four months of the publication date.
11. Objections to, and comments on, proposals by the governing body must be sent to the SOC within the same timeframe as for LA proposals (see paragraph 9, above). The SOC is likely to request the governing body’s comments on these representations.
12. The SOC considers the proposals, taking account of all the relevant facts and arguments, and may then:
 - approve the proposals
 - give a conditional approval
 - approve them with modifications
 - reject them.
13. If the SOC is unable to reach a unanimous decision, the proposals will be considered by the independent Schools Adjudicator who will consider the proposal afresh. The Adjudicator can make any one of the decision options available to the SOC as at paragraph 12, above.
14. Once proposals have been approved, they must be carried out, although the promoters can ask the SOC to agree to minor changes, for example changing the date when the proposals would come into effect.
15. If circumstances change and it is difficult, or is no longer appropriate, to carry out approved proposals, LAs and governing bodies can publish new proposals which, if approved by the SOC, would remove the duty to carry out the original proposals. For change of category, the process is slightly different in that fresh proposals are not necessary, but the SOC may consider a formal request from the governing body that it be relieved of the duty to implement the proposals.

16. The Learning and Skills Council (LSC) can also publish proposals to reorganise sixth form provision in schools. Guidance on these arrangements is available on the DfES website at www.teachernet.gov.uk/docbank/index.cfm?id=4390
17. The governing body of a community or voluntary controlled secondary school may publish and decide on its own proposals to change category to foundation. It must consult and publish proposals as set out in paragraphs 6 and 7, above.
18. Representations to the proposals must be sent to the governing body. Such representations must be sent within four weeks of publication of the proposals. The governing body then determines the change of category by a majority vote.

THE LAW

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School Standards and Framework Act 1998: Sections [28–30](#), [35](#) and [109](#), and Schedules [6](#) and [8](#)

Education Act 2002: Sections [70–75](#) and Schedules [8](#), [9](#) and [10](#)

Education (School Organisation Proposals) (England) Regulations 1999: SI 1999/2213

Education (School Organisation Proposals) (England) (Amendment) Regulations 2000: SI 2000/2198

The Education (School Organisation Proposals) (Miscellaneous Amendments) (England) Regulations 2004: SI 2004/3052

The Education (School Organisation Proposals) (England) (Amendment) Regulations 2005: SI 2005/801

The Education (Change of category of maintained schools) (Amendment) (England) Regulations 2005: SI 2005/1731

The Education (Change of category of maintained schools) (Amendment) (England) Regulations 2003: SI 2003/2136

Education Act 2005: Sections [64–73](#) and Schedules [10](#), [11](#) and [12](#)

Education (School Organisation Proposals) (England) (Amendment) Regulations 2001: SI 2001/1405

Education (School Organisation Proposals) (England) (Amendment) Regulations 2003: SI 2003/1229

Education (Change of Category of Maintained Schools) (England) Regulations 2000: SI 2000/2195

Education (Pupil Registration) Regulations 1995: SI 1995 No. 2089 (as amended by The Education (Pupil Registration) Regulations 1997: SI 1997 No. 2624)

GUIDANCE

www.dfes.gov.uk/schoolorg which contains School Organisation: Making Changes to Maintained Schools ref DfES/0395/2003

DfES Guidance on Statutory Proposals

DfES Proposers Guidance on Change of Category

19 EXTENDED SCHOOLS

CHAPTER SUMMARY

This chapter explains the governing body's role in providing and leading extended services. The governing body must:

- ensure that extended services benefit the public and any profits made are reinvested in the service or in the school;
- ensure that extended services do not interfere with the educational achievement of the school;
- ensure that the provision of extended services is not funded or subsidised by the school's budget share;
- consult with the Local Authority (LA), school staff, parents of its registered pupils, registered pupils themselves and any other persons the governing body considers appropriate;
- have regard to any advice given to them by the LA and to guidance that has been issued by the Department for Education and Skills (DfES);
- register day-care facilities provided directly by the school with Ofsted in due course.

GOVERNORS' DUTIES

1. The governing body has the power to provide, or enter into contracts to provide, any facilities or services that will further any "charitable purpose" for the benefit of pupils at its school, families of pupils, and people who live and work in the local community. This power is in addition to governing bodies' pre-existing powers and responsibilities regarding the control and community use of school premises (see chapter 17 of this Guide on Control and community use of school premises).
2. The phrase charitable purpose has particular legal meaning that does not coincide with its popular meaning. To be "charitable" in this sense, the activity must benefit the public or a section of it and either:
 - * relieve poverty;
 - * advance education;
 - * advance religion; or
 - * be for another purpose that the law recognises as charitable.

Most services and activities that schools want to provide such as: childcare; adult and family learning; co-located health and social services; parenting support and other facilities of benefit to the local community, such as credit unions or ICT access are charitable in this sense. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

3. To further such activities a governing body may incur expenditure, provide services, commission others to provide services, enter into legal agreements and may charge for services or facilities subject to certain limitations.
4. A governing body cannot engage in any activity that might interfere with its duty to conduct the school with a view to promoting high standards of educational achievement at the school. The governing body's use of the new 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 Local Authority (LA) regarding the control of school premises.

5. The provision of community services or facilities may not be funded or subsidised by the school's budget share. The LA's local scheme for financing schools will have been extended to cover these activities. The scheme will include matters such as audit requirements, treatment of income and surpluses, the supply of financial information, health and safety, and insurance.
6. The LA has the power to suspend a school's right to a delegated budget if the LA considers the financial management of community services provided by a governing body unsatisfactory, or that the governing body is guilty of substantial or persistent non-compliance with any rules laid down by or under the LA's scheme.
7. Before implementing any plans to provide facilities or services using the new power, the governing body must consult the LA, school staff, parents of its registered pupils, registered pupils themselves (where this is appropriate) and any other persons the governing body considers appropriate. The governing body must also have regard to any advice given to them by the LA and to guidance that has been issued by the Department for Education and Skills (DfES).
8. The DfES's guidance provides advice on a range of practical issues such as:
 - partnership working and relationships with other agencies
 - access to funding sources
 - management arrangements
 - finance
 - staffing
 - health and safety
 - security
 - premises and related issues.

Separate, but connected guidance on developing childcare provision in schools is also available. Further information on a series of topics relating to extended schools, including a guide on governors' roles and governance, is available on the TeacherNet website at [www.teachernet.gov.uk/extended schools](http://www.teachernet.gov.uk/extended_schools)

9. Day-care facilities for children under the age of eight provided directly by schools have to be registered with and inspected by Ofsted. Ofsted's registration and inspection process is based on an assessment of compliance with *The National Standards for Under Eights, Day Care and Childminding* and include checks to ensure that those working in the facility are suitable to do so and that the premise are suitable. Criminal Records Bureau checks form part of this process. Following the [Education Act 2005](#), all inspections of early years education are being combined with childcare inspections where possible so that the majority of providers, including schools, get a single inspection event and report every three years.
10. Under the [Disability Discrimination Act 1995](#) schools have duties under [Part 2](#) of the DDA as employers, under [Part 3](#) of the DDA as service providers (and in due course, as public authorities) and [Part 4](#) of the DDA as education providers. When governors of extended schools provide extended services, they will need to be clear as to which part of the Act is engaged and impacts upon their functions and responsibilities towards disabled pupils, users or employees. It is possible that governors' responsibilities might change according to the service being delivered, why it is being delivered and who it is being delivered to.
11. Governors will also need to establish, when services are provided by a third party on schools premises, either independently of the school, or on behalf of the school, who, under the DDA will be regarded as the service provider with the responsibility to make "reasonable adjustments" and/or access improvements. This will ensure that disabled people are not unjustifiably discriminated against in their access to the service.

This is a complex area of the law and governors might find it prudent to obtain expert advice.

THE LAW

N.B. As legislation is often amended and Regulations introduced, the references made in this Guide may be to legislation that has been superseded. For an up to date list of legislation applying to schools, please refer to the GovernorNet website

www.governornet.co.uk

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

[Children Act 1989, Part X](#) (as amended by the [Care Standards Act 2000](#))

GUIDANCE

Extended Schools: providing opportunities and services for all at
www.teachernet.gov.uk/extendedschools

Childcare in Extended Schools: providing opportunities and services for all at
www.teachernet.gov.uk/extendedschools

Know how leaflet: Governors' roles and governance at
www.teachernet.gov.uk/wholeschool/extendedschools/practicalknowhow

20 SCHOOL COMPANIES

CHAPTER SUMMARY

This chapter gives details of how governing bodies of maintained schools can, in certain circumstances, form a school company with other governing bodies and/or parties. It explains the roles and responsibilities of governing bodies and how schools can benefit through collective purchasing, facilitating services and how profits are reinvested.

1. The [Education Act 2002](#) section 11 and 12 enables the governing bodies of maintained schools to join with other governing bodies and/or other parties to form companies to undertake certain specified activities. This is so that schools can purchase collectively goods and services, provide services or facilities to other schools, or exercise functions which a Local Authority (LA) is able to contract out. The Act also gives governing bodies the power to invest in such companies.
2. These powers are optional. Schools may use the power to form a school company if they feel that a joint identity with other schools will facilitate collective activity.
3. The corporate identity enables schools to enter contracts as a group, to pool resources effectively. Schools are able to follow a well established procedure for forming a company and have considerable flexibility in how the company is run.
4. The governing body remains responsible for the running of the school: a school and a company remain separate entities, so if the company gets into financial trouble, there will be no risk to the school's assets or the employment of its staff. Teachers will not be expected to transfer to the company.
5. Governing bodies will need the consent of their LA to join, but this can only be refused where there is good reason. Each company will have a supervising authority (an LA) to ensure that the company is run on a sound financial footing. This is intended to provide a protective framework for companies to operate within, but the supervising authority will not intervene in the day-to-day running of the company.
6. Collective purchasing is intended to help schools save money through economies of scale. Schools would also benefit from a division of labour: sharing the burden of purchasing between members. School companies are free to seek professional support and advice.
7. Through a company, schools with particular strengths and capacity can share their experiences and expertise with other schools. As well as enabling the sharing of school improvement and other expertise, staff can benefit from the development opportunities gained by supporting other schools.
8. School companies can make a profit. The articles of the company will determine that profits must be used for the benefit of its members and/or to further the aims of the company.

Amendment 1
May 2006

Amendment 1
May 2006

Amendment 1
May 2006

Amendment 1
May 2006

THE LAW

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

[The School Companies Regulations 2002](#): SI 2002/2978 and, for companies where the purpose is to enter into or facilitate PFI agreements, [The School Companies \(Private Finance Initiative Companies\) Regulations 2002](#): SI 2002/3177

GUIDANCE

Regulations and guidance are available at two website locations, as follows:

www.standards.dfes.gov.uk/la/capacitybuilding/newways/schoolcompanies/?version=1

www.teachernet.gov.uk/management/atoz/index.cfm?component=topic&id=298&part=1

21 GOVERNING BODY FEDERATION AND COLLABORATION

CHAPTER SUMMARY

This chapter outlines the conditions and processes allowing up to five maintained schools to federate under one governing body (federation), or for maintained schools to adopt collaborative arrangements with other maintained schools, 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 procedure for schools to federate under the Act are set out in [The School Governance \(Federations\) \(England\) Regulations 2004](#): SI 2004 No. 2042, which came into force on 30 August 2004.

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

2. The Regulations provide that a federation shall not contain more than five schools. If in particular circumstances schools think that a federation of more than five schools would offer advantages, they will need to apply to the Secretary of State for Education and Skills under “Power to Innovate provisions” of Section 2 of the Act.
3. More informal collaborative arrangements between maintained schools and non-maintained schools (such as City Technology Colleges, Academies, independent schools and further education institutions) are also possible, but these may not include federation of the governing bodies or formal joint committees of the governing bodies under the Act. More detailed guidance on the Regulations is available at www.governor.net.co.uk and on more informal federations at www.standards.dfes.gov.uk

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 with the other governing body or bodies publish proposals for federation.
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 or authorities for the schools within the federation;
 - the date, not less than six weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent;
 - such other matters as the governing body considers appropriate.
8. The governing bodies proposing to federate must publish the proposals by sending them to:
- the relevant Local Authority (LA) (or LAs if the schools are in more than one authority);
 - the headteacher of each school;
 - all staff paid to work at any of the schools;
 - the parents of registered pupils at any of the schools;
 - such other persons as the governing bodies consider appropriate.

N.B. in the case of a school with a foundation, proposals must also be sent to:

- (i) the foundation governors;
- (ii) any trustees of the school;
- (iii) 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 where the school is designated under [Section 69\(3\) of The School Standards and Framework Act 1998](#) as having a religious character.

A copy of the proposals must be made available for inspection at all reasonable times at the 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 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 [Section 28 of the School Standards and Framework Act 1998](#). Those bringing forward the proposals (i.e. the LA or the promoters) 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, 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 2004 Federation Regulations. Where one or more of the new schools is to be a foundation or voluntary school, the LA must consult the promoters 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 federated school, 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 federated school 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 2003](#). Unless otherwise specified in paragraphs 17–30, all references to school in chapter 2 of this Guide (Constitution of governing bodies) should be read as “school within the federation”.

Parent governors

17. The criteria for eligibility to stand for election as a parent governor on the federated governing body are as for parent governor on a governing body, outlined in chapter 2 of this Guide (Constitution of governing bodies), except for paragraph 18, below.
18. If insufficient parents stand for election, the governing body may appoint the following in the criteria 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 11–14 of chapter 2 of this Guide (Constitution of governing bodies), except for paragraph 20, below. In these paragraphs references to “the school” in this chapter should be read as “the federation”.
20. The headteacher of a federation or a federated school (unless he or she resigns as a governor in accordance with [Regulation 22\(1\) of The School Governance \(Constitution\) \(England\) Regulations 2003](#)) is an ex officio member of the federated governing body.

Local Education Authority (LEA) governors

21. LAs can appoint any eligible person as an LEA governor. A person eligible to be a staff governor is disqualified from appointment as an LEA governor.
22. If a federation includes schools that are maintained by more than one LA, the LAs must agree among themselves who shall appoint the LEA governors, and in what proportion.

Community governors

23. The definition of community governors is outlined in paragraphs 16–18 of chapter 2 of this Guide (Constitution of governing bodies). This is a wide definition and people from a business or professional background and minor authority representatives may be appointed as community governors.

Foundation governors

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24. Where a federation includes a foundation or voluntary school, the governing body of the federation will include foundation governors. The definition of a foundation governor is outlined in paragraphs 19–21 of chapter 2 of this Guide (Constitution of governing bodies). References to “the school” in this chapter should be read as “the federated school”.

Partnership governors

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

Sponsor governors

29. Sponsor governors are appointed by the governing body and it is at the governing body's discretion whether or not they choose to appoint sponsor governors. The governing body of a federation may appoint up to two, or where the federation contains secondary schools only, up to four, sponsor governors. The definition of sponsor governors is outlined in paragraphs 22–23 of chapter 2 of this Guide (Constitution of governing bodies).

Associate members

30. Associate members are appointed as members of any committees established by the governing body of a federation. Paragraphs 24–25 of chapter 2 of this Guide (Constitution of governing bodies) explain the roles and terms of office of associate members.

COMPOSITION OF THE GOVERNING BODY – GENERAL PRINCIPLES

31. The number of governors must be no fewer than nine and no more than 20, excluding sponsor governors (except in the case of a federation containing four schools, each with a separate headteacher, when the membership may be up to 24, or five schools, each with a separate headteacher, when it may be up to 28).
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 whole number next above or the whole number next 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 headteacher governors must be included whether or not the headteacher of the federation (if there is one), or any headteacher of a federated school has chosen not to act as a governor.

Federations comprising only one category of school

34. The governing body of a federation containing only one category of school must consist of the same proportion of categories of governor as laid down in paragraph 26 of chapter 2 of this Guide (Constitution of governing bodies).
35. When calculating the number of parent governors, the governing body must provide that for each federated school at least one parent governor must be 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 only, the governing body may, in addition, appoint up to two sponsor governors or, where the federation contains secondary schools only, up to four sponsors. 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 four) as is required to preserve their majority.

FEDERATIONS COMPRISING MORE THAN ONE CATEGORY OF SCHOOL

Federation comprising voluntary controlled schools and community, community special or maintained nursery schools

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

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

VA 38. The governing body of a federation that includes more than one category of school, but at
F least one foundation school or foundation special or voluntary aided school, must consist of:

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

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 [17](#), [18](#) and [20–32](#) of The School Governance (Constitution) (England) Regulations 2003 apply, with some modifications set out in [Schedule 7 to The School Governance \(Federation\) \(England\) Regulations 2004](#)

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 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.

VA 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 schools, 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. (Here 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.

VA 45. Where there is disagreement about the draft instrument and the federation includes one or
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F 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. If the parties involved cannot reach agreement, the foundation governors, trustees, or appropriate religious body can refer the draft to the Secretary of State for Education and Skills for direction.

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 2004](#). These 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. Parts [1](#), [2](#) and [4](#) of [The School Staffing \(England\) Regulations 2003](#) and the Schedule apply to the staffing of governing bodies of federations, with amendments set out in [Schedule 9 to The School Governance \(Federation\) \(England\) Regulations 2004](#). They substitute “federation or a federated school” for “school” and provide that both the governing body and the headteacher of the federation (if any) shall have the power to suspend any person employed to work at the federation. The headteacher of a federated school shall have the power to suspend any person employed to work at that federated school.

Information for the governing body of a federation

49. Immediately before the federation date, the governing body of each school that will become a federated school must prepare, for the purpose of assisting the governing body of the federation, a brief report of the action which it has taken in the discharge of their functions relating to the school.

50. All minutes and papers of a governing body relating to a federated school, including the report prepared under paragraph 49, must be made available to the governing body of the federation.

Financing of federations

51. Federated schools and their governing bodies are subject to the same provisions as individual schools and their governing bodies [chapter 4 of Part 2 of The School Standards and Framework Act 1998](#). References to “maintained” schools become references to “federated” schools and “governing body” becomes “governing body of a federation”, etc. The governing body of the federation will continue to receive individual delegated budgets for each of the federated schools. It will be able to use these across the schools in the federation, but will need to maintain mechanisms to provide an audit trail for each school budget. Once a federation is formed, a modified Section 50 of the 1998 Act applies to ensure that the governing bodies of federations:

- receive the budget shares of all the schools in the federation;
- have the same powers as individual governing bodies to spend both the schools' budget shares and any carried over amount (which may include a deficit).

PROCEDURES FOR A SCHOOL TO LEAVE A FEDERATION

52. In order for a school to leave a federation the following procedure must be followed. The request must be signed by one of the parties listed below:

- two or more governors;
- one-fifth of the parents of registered pupils at the federated school;
- two-fifths of staff who are paid to work at the federated school;
- the LA;
- the trustees of the federated school;
- a body entitled to appoint foundation governors onto the governing body of a federation.

53. The governing body of the federation must give notice of the request to:

- all relevant LAs;
- the headteacher of the federation and each headteacher of a federated school;
- the foundation governors, any trustees under a trust deed relating to the federated school and, in the case of a Church of England or Roman Catholic school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools where the federated school in respect of which the request has been made is a foundation or voluntary school with a religious foundation;
- all staff paid to work, and the parents of all registered pupils, at the federated school in respect of which the request has been made;
- such other persons as the governing body of a federation considers appropriate.

54. The notice referred to in paragraph 53 must be given within the period of five days beginning with the date on which the request was received.

55. A request shall be taken to have been received by a governing body of a federation if given or sent to the chair or to the clerk of the governing body of that federation.

56. Not less 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](#). The governing body of a federation must, so far as is practicable, give notice in writing of their decision under paragraph 56 within five days to the persons named in paragraph 53.

Referral to the Secretary of State for Education and Skills

59. Not more than 15 days after the day on which the notice of the governing body's decision was given, any of the persons referred to in paragraph 53 may refer the matter to the Secretary of State for Education and Skills. If they do so they must inform the governing body of the federation.
60. On a reference under [Regulation 36 of The School Governance \(Federation\) \(England\) Regulations 2004](#), the Secretary of State for Education and Skills will determine that:
- the federated school shall leave the federation; or
 - the federated school shall not leave the federation.
61. Upon receiving the Secretary of State for Education and Skills's determination, the governing body of a federation must, within five school days, inform all staff paid to work in the federation and all parents of registered pupils at federated schools within the federation of the Secretary of State for Education and Skills's determination and its effect.

Decision to permit a federated school to leave a federation

62. Where either a governing body of a federation has resolved that a federated school should leave the federation or the Secretary of State for Education and Skills has determined that a federated school should leave a federation, upon notification of the decision, the LA must:
- establish a temporary governing body in respect of that school in accordance with Parts 3 and 4 of [The New Schools \(General\) \(England\) Regulations 2003](#);
 - issue a new instrument of government for the school in accordance with [Part 5 of The School Governance \(Constitution\) \(England\) Regulations 2003](#);
 - review the instrument of government of the federation in accordance with [Regulation 31 of The School Governance \(Constitution\) \(England\) Regulations 2003](#)

Availability of amounts representing budget share on leaving a federation

63. 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 to the governing body of the federation) in respect of the school leaving the federation as it thinks fit for any purposes of that school.

Incorporation of governing body of a school leaving a federation

64. 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

65. 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 which 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.

66. [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

67. Where a governing body of a federation decides that the federation shall be dissolved, that one of only two federated schools shall leave a federation, or the Secretary of State for Education and Skills determines that one of only two federated schools shall leave a federation, the governing body of a federation must give notice of the fact and the date of dissolution to the persons mentioned below within 14 days.

68. The persons to be notified are:

- all relevant LAs;
- the headteacher of the federation and each headteacher of a federated school;
- every member of staff paid to work at the federated school in respect of which the request has been made;
- the parents of every registered pupil at the federated school in respect of which the request has been made;
- 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 foundation;
- such other persons as the governing body of a federation considers appropriate.

69. 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 New Schools \(General\) \(England\) Regulations 2003](#);
- issue a new instrument of government for each school in accordance with [Part 5 of The School Governance \(Constitution\) \(England\) Regulations 2003](#)⁶⁹.

Availability of amounts representing budget share on dissolution of a federation

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

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

71. On the date of dissolution, the temporary governing body of each federated school 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

72. 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.

73. [Section 198 of the Education Reform Act 1988](#) will also apply to the division of property upon a school leaving a federation. This and [Schedule 10](#) to that Act make further provision in relation to transfers of property, rights and liabilities, and will need to be taken into account by the schools and federations involved.

GOVERNING BODY COLLABORATION

74. Under Section 26 of the Act, schools are able to have increased collaborative arrangements with other maintained schools, including joint meetings of governing bodies and joint committees. The [School Governance \(Collaboration\) \(England\) Regulations 2003](#): SI 2003, No 1962 came into force on 1 September 2003. All maintained schools will be able to have increased collaborative arrangements with other maintained schools, including joint meetings of governing bodies and joint committees. More detailed guidance on the Regulations is available at www.governor.net.co.uk and on more informal collaboration at www.standards.dfes.gov.uk/schooldiversity

Collaboration between schools

75. 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 79–86 below, all references to “committees” in paragraphs 74–88 of chapter 3 of this Guide (Governing body powers, duties and procedures) should be read as “joint committees”.
76. [The School Governance \(Procedures\) \(England\) Regulations 2003](#) apply to joint meetings of full governing bodies in the same way as they apply to meetings of individual governing bodies. Where governing bodies make arrangements to discharge their functions jointly in respect of any of their functions relating to individual members of the school staff, [The School Staffing \(England\) Regulations 2003](#) apply and such functions cannot be delegated to joint committees.
77. The selection of the headteacher or deputy headteacher may be delegated to a special selection panel taken from the governors of the collaborating schools and must be approved by the relevant governing body. Decisions relating to the dismissal of the headteacher may be delegated to one or more governors.
78. As the guidance on [The School Staffing \(England\) Regulations 2003](#) makes clear, most decisions on staff appointments are recommended to be delegated to the headteacher, as are the decisions on dismissal. However, these functions can be delegated to several combinations of headteachers and governors.

Establishment of joint committees

79. 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 governors. A joint committee will appoint a chair annually and may remove its chair from office at any time.

Clerks to joint committees

80. A joint committee must appoint a clerk (who cannot be one of the headteachers) and may remove the clerk from office at any time. In the absence of the clerk from a meeting, a joint committee may appoint any one of their number (except a headteacher) to act as clerk for the purposes of that meeting. The functions of the clerk to the joint committee are as outlined in paragraph 80 of chapter 3 of this Guide (Governing body powers, duties and procedures).

Associate members

81. 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 86–87 of chapter 3 of this Guide (Governing body powers, duties and procedures). References to “governing bodies” should read “collaborating governing bodies” and references to “committees” should read “joint committees”.

Right of persons to attend meetings of joint committees

82. Except as specified in paragraph 83 below, or if they have a pecuniary interest in a matter, the following people may attend a meeting of a joint committee:
- any members of the joint committee, provided they have not been suspended by one of the collaborating governing bodies;
 - the headteachers, whether or not they are members of the joint committee;
 - the clerk to the joint committee;
 - such other persons as the joint committee may determine.

83. 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

84. The proceedings and minutes of joint committees are as outlined in paragraphs 74–88 of Chapter 3. 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

85. The restrictions on persons taking part in proceedings of joint committees are as outlined in paragraphs 81–88 of chapter 3 of this Guide (Governing body powers, duties and procedures). References to “governing bodies” should read “collaborating governing bodies” and references to “committees” should read “joint committees”.

THE LAW

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

[The Education Act 2002: Sections 24–26](#)

The Education Reform Act 1988: [Section 198](#) and [Schedule 10](#)

[The School Governance \(Federations\) \(England\) Regulations 2004](#): SI 2004/2042

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

[The School Governance \(Constitution\) \(England\) Regulations 2003](#): SI 2003/348
(Regulations [17](#), [18](#) and [20–32](#))

[The School Governance \(Procedures\) \(England\) Regulations 2003](#): SI 2003/1377

[Education \(School Government\) \(England\) \(Amendment\) Regulations 2000](#): SI 2000/1848

[School Governance \(Constitution and Procedures \) \(England\) \(Amendment\) Regulations 2003](#): SI 2003/1916

[School Governance \(Constitution, Procedures and New Schools\) \(England\) \(Amendment\) Regulations 2004](#): SI 2004/450

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

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

[School Governance \(Constitution, Federations and New Schools\) \(England\) \(Amendment\) Regulations 2005](#): SI 2005/1730

GUIDANCE

Guidance on the School Governance (Federations) (England) Regulations 2004

22 INTERIM EXECUTIVE BOARDS

CHAPTER SUMMARY

This chapter explains the powers that Local Authorities (LAs) and the Secretary of State for Education and Skills have to appoint an Interim Executive Board (IEB) at a school causing concern. An IEB is a governing body appointed for a temporary period in exceptional circumstances with the specific task of ensuring school improvement. The nature and duties of an IEB are covered in this chapter as well as the transition back to normal governance. The chapter also explains the Regulations that set out the make-up of a Shadow Governing Body (SGB) for community, voluntary and foundation schools, and the requirements and duties placed upon one.

An IEB must:

- take on all the responsibilities of a governing body;
- conduct the school so as to secure a sound basis for improvement;
- promote high standards of education.

An SGB must:

- work alongside an IEB before taking over responsibility as a governing body;
- act alone as a governing body until the date of constitution of a new normally constituted governing body;
- be constituted as indicated in Regulations;
- follow procedures set out in Regulations in relation to the election of the chair and vice-chair appointments and function of the clerk, and proceedings and meeting papers.

INTRODUCTION

1. The [Education Act 2002](#) introduced new powers enabling Local Education Authorities (LEAs) and the Secretary of State for Education and Skills to replace a governing body of a school causing concern with an Interim Executive Board (IEB) in circumstances where the governing body is proving an obstacle to progress.

LOCAL AUTHORITIES (LAs)

LA powers

2. Section [57 of the Education Act 2002](#) inserted [Section 16A](#) into the School Standards and Framework Act 1998, providing LAs with the power to appoint a specially constituted governing body of interim executive members to replace a normally constituted governing body for a temporary period. The power to replace the governing body of a school with an IEB is available when a school:
 - is in special measures
 - has been judged to require significant improvement
 - has failed to comply with a formal warning from its LA.
3. The power is intended to be used only in exceptional circumstances and may be used only with the consent of the Secretary of State for Education and Skills. Where an LA is minded to use this power, it should inform the Department for Education and Skills (DfES), setting out the reasons for suggesting an IEB and giving details of any steps the LA has taken to

turn the school around. It should also provide details of the proposed members and the skills and experience they will bring.

4. An LA should have evidence that a governing body is obstructing rather than enabling progress being made in improving a school. The power should not normally be used unless it is clear that the use of other intervention powers (to appoint additional governors or withdraw the delegated budget) has failed or would fail to bring about the necessary improvement.
5. Before using the power, the LA must consult the school governing body, and in the case of a foundation or voluntary school, the diocesan authority or any other body which appoints foundation governors. The normally constituted governing body must be given written notice that an LA proposes to establish an IEB. An LA must give written notice to the governing body stating the date on which it is to be replaced by an IEB.

THE POWERS OF THE SECRETARY OF STATE FOR EDUCATION AND SKILLS

6. [Section 58 of the Education Act 2002](#) inserted [Section 18A](#) into the School Standards and Framework Act 1998 and extended the intervention powers available to the Secretary of State for Education and Skills in respect of schools requiring special measures or significant improvement. It did this by adding the power to appoint interim executive members to replace the governing body of the school. Before exercising this power, the Secretary of State for Education and Skills must consult the LA, the governing body that is to be replaced and the body responsible for appointing any foundation governors, unless that consultation has already been carried out by the LA in connection with a proposal of their own to appoint interim executive members.

PROVISIONS RELATING TO IEBs

7. IEBs are expected to be appointed only in exceptional cases and almost always by LAs. The Secretary of State for Education and Skills will be prepared to appoint an IEB only where an LA chooses not to do so and where he or she believes that such action is absolutely necessary to secure the improvement that is needed at the school.
8. [Schedule 1A](#) to the School Standards and Framework Act 1998, inserted by [Section 59\(2\)](#) of the Education Act 2002, contains detailed provisions relating to IEBs.
9. An IEB should be a small, focused group with at least two members appointed for the full period which it is expected to take to turn the school around. Members of an IEB should be chosen on an individual basis, although existing governors can be appointed to an IEB. The period of time can be specified in the initial notice of establishment. The IEB will take on all the responsibilities of a governing body with regard to the conduct of the school, including the management of the budget; the curriculum; staffing; pay and performance management; and the appointment of the headteacher and deputy headteacher.
10. The initial appointment should commence on the date specified in the notice. Once established, further interim executive members can be appointed at any time. Interim executive members hold office in accordance with their terms of appointment and can be removed for incapacity or misbehaviour. Copies of the notice appointing a member should be given to each member; existing governors; the LA or Secretary of State for Education and Skills (whichever is appropriate); and the appropriate diocesan authority or any person(s) appointing foundation governors, where appropriate.
11. LAs or the Secretary of State for Education and Skills may choose to pay interim executive members whatever amount the LA or DfES decides. They may also nominate a member to be chair of the IEB.

IEB AND LA DUTIES

12. The IEB is the governing body of the school for the time it is in office. It has a duty to conduct the school to secure, as far as possible, a sound basis for future improvement in the conduct of the school. It should also promote high standards of educational achievement and put appropriate targets in place. The IEB may determine its own procedure to carry out the duties of a governing body and make such arrangements as it wishes for its functions to be carried out by any other person.

Delegated budget

13. The IEB has a right to a delegated budget. If the school's budget has been withdrawn either under Section [16A\(1\)](#) or [18A\(1\)](#) or paragraph 1 of [Schedule 15](#) to the School Standards and Framework Act 1998, then the LA must restore the budget from the date when the IEB commences its work. If a notice has been given to the normally constituted governing body under Schedule 15, 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

14. The IEB may recommend to the LA or to the Secretary of State for Education and Skills that the school should be closed under the normal statutory procedures. However, it cannot itself publish proposals for closure. If closure proposals are agreed and the LA or Secretary of State for Education and Skills does decide to close the school, the IEB must continue to hold office until the implementation date of the proposals when the LA ceases to maintain the school.

TRANSITION – SHADOW GOVERNING BODIES (SGBs) AND RESUMPTION BY A NORMALLY CONSTITUTED GOVERNING BODY

Cessation of the IEB

15. If the final date for the IEB to cease work was not given in the first notice of appointment, the LA (or the Secretary of State for Education and Skills where he or she has appointed the IEB) must specify a date when a normally constituted governing body will return by giving notice. This notice should be sent to all those (listed above) who were given a copy of the first notice.

SGBs

16. The [School Governance \(Transition from an Interim Executive Board\) Regulations 2004](#) cover the transition to normal school governance arrangements after a date has been set for the completion of the work of the IEB. The Regulations provide for an SGB to work alongside the IEB for at least six months before taking over full responsibility as the governing body until a normally constituted governing body is established under an instrument of government. The SGB will be expected to act alone as the governing body of the school for up to 13 months after the IEB has been disbanded.
17. SGBs consist of between 9 and 20 members made up of shadow parent, staff, LA and community governors and shadow foundation governors for foundation and voluntary schools. They are appointed by the LA in all categories of school and it will be for the LA to decide the size of the SGB. In appointing shadow foundation governors, the LA must consult those people who would be entitled to make such appointments if the governing body was a normally constituted governing body. An interim executive member can also be a shadow governor.

18. The number or proportion of each category of governor for each category of school is set out in the Regulations as follows.

19. For community schools, community special schools and maintained nursery schools the numbers and proportions should be:

- one-third or more shadow parent governors;*
- at least two, but no more than one-third shadow staff governors;**
- one-fifth shadow LEA governors;
- one-fifth or more shadow community governors.

F 20. For foundation schools and foundation special schools the numbers and proportions should be:

- one-third or more shadow parent governors;*
- at least two, but no more than one-third shadow staff governors;**
- at least one, but no more than one-fifth shadow LEA governors;
- one-tenth or more shadow community governors;
- where the school has a foundation, at least two but no more than one-quarter should be shadow foundation governors.

vc 21. For voluntary controlled schools the numbers and proportions should be:

- one-third or more shadow parent governors;*
- at least two, but no more than one-third shadow staff governors;**
- at least one, but no more than one-fifth shadow LEA governors;
- one-tenth or more shadow community governors;
- at least two, but not more than one-quarter shadow foundation governors.

va 22. For voluntary aided schools the numbers and proportions should be:

- at least one shadow parent governor;*
- at least two, but not more than one-third shadow staff governors;**
- at least one, but not more than one-tenth shadow LEA governors;
- such number of shadow foundation governors as will lead to their outnumbering the shadow governors mentioned above by two.

23. * Shadow parent governors must be parents of a child under or of compulsory school age; the child need not attend that particular school, but the parent of a child attending the school would be preferable, if at all possible.

** Shadow staff governors must be paid to work at a maintained school. Wherever possible, LAs should appoint a person paid to work at the school in question as a shadow staff governor of that school.

24. The Regulations also specify the procedures to be followed in relation to the election of the chair and vice-chair, the appointment of and functions of the clerk, and the proceedings and meeting papers of the SGB. In all other respects, the SGB should establish their own procedures.

Resumption by a normally constituted governing body

25. At the end of the interim period specified in the notice of appointment, the IEB will cease to exist in accordance with paragraph 18 of Schedule 1A to the School Standards and Framework Act 1998, and the SGB will be the governing body of the school as if it were a normally constituted governing body.

26. The LA must set a date on which the shadow governors will vacate office and the governing body will be constituted as a normally constituted governing body. This date is called the constitution date and must be set at a date no later than 13 months after the IEB ceased to exist. The LA must give one term's notice of the constitution date and will need to ensure that it secures the appointments or elections of governors as required by the instrument of government. LAs should be aware that any amendments that need to be made to the school's instrument of government must be made at an appropriate stage to enable the normally constituted governing body to be constituted as intended.
27. The LA and the SGB may wish to review the school's instrument of government prior to the constitution date to ensure that the size and membership of the normally constituted governing body will be appropriate. Section 5 of the Statutory Guidance on the Constitution Regulations requires the governing body to draft the instrument and submit it to the LA. In keeping with this, LAs should expect the SGB, acting as the normally constituted governing body, to prepare the first draft of any new instrument for its approval.

THE LAW

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

School Standards and Framework Act 1998: Schedule 1A, Section 19(2) and Schedule 15, Section 1

Education Act 2002: Sections 57, 58 and 59(2)

Education Act 2005: Section 44

The School Governance (Transition from an Interim Executive Board) (England) Regulations 2004: SI 2004/530

GUIDANCE

DfES publications:

Schools Causing Concern 2005, reference DfES/1549/2005, published September 2005. Standards website (www.standards.dfes.gov.uk/sied/si/SCC)

Annex 1 CHILDREN'S CENTRES

Although Children's Centres have no legal status, it is important that governors are aware of where their responsibilities lie when a Children's Centre is established on a school site. The series of questions and answers below should provide useful background information.

1. Is a Children's Centre a school? Does it have a Department for Education and Skills (DfES) school number?

No. A Children's Centre is not a school and will therefore not have its own DfES number.

2. What happens when a nursery school becomes a Children's Centre?

Local Authorities (LAs) have been asked to set up Children's Centres in their areas to deliver integrated services for families and young children. Wherever possible, Centres will be developed from existing provision such as a maintained nursery school. If your school is asked to develop into a Children's Centre, it will not lose its maintained nursery school status or DfES school number.

3. If a maintained nursery school becomes subsumed within a Children's Centre should someone with Qualified Teacher Status (QTS) be in charge?

There is no automatic assumption that the headteacher of the nursery school will automatically become the head of the entire Centre. In some cases Children's Centres will develop from the merging of two, or perhaps three existing entities, for example a maintained nursery school and local health setting or family support centre. In such a scenario it is possible that they may just be head of learning.

Since 1 September 2003, there is no requirement for headteachers to be qualified teachers. However, since 1 April 2004, there is a requirement for all first time headteachers of maintained schools and non-maintained special schools to hold the National Professional Qualification for Headship (NPQH). (Please note the 'working towards' allowance for NPQH will cease on 1 April 2009, and from that date, all first-time headteachers for maintained schools and non-maintained special schools will need to have attained the NPQH qualification before taking up post.)

In the case of maintained nursery schools, first time headteachers must either have, or be working towards attaining the NPQH, or the new National Professional Qualification in Integrated Centre Leadership. (NPQICL)

4. Who has responsibility for health and safety of a Children's Centre on a school site?

Under the Health and Safety at Work Act 1974, the employer is responsible for the health and safety of their employees. It is also responsible for the health and safety of non-employees who are on the work premises or who are affected by the employer's undertakings. This includes those participating in community or family activities. LAs will therefore need to agree in discussion with key partners (which would include the governing body) the different responsibilities that each partner will have for ensuring general health and safety. They will also need to agree appropriate insurance cover.

5. What happens to the head of a maintained nursery school that becomes a Children's Centre?

LAs are the employers of headteachers of maintained nursery schools and governing bodies have delegated responsibility for employer functions. Any changes to the conditions of employment for the headteacher is therefore a matter for negotiation between the LA,

headteacher and governing body. Full regard should be given to the School Teachers' Pay and Conditions Document (as in force from time to time).

6. Who will be held responsible for delivering the foundation stage education by Ofsted?

Where the educational provision is an integral part of the school (i.e. built around an existing maintained nursery class and/or reception class) and delivered by staff employed by the school's governing body, it is the governing body that is responsible for the quality of education.

7. Will Ofsted inspect Children's Centres?

Yes.

8. What happens if a school leases buildings to an independent Children's Centre rather than a Sure Start Children's Centre?

Some early years providers call themselves Children's Centres. These should not be confused with Sure Start Children's Centres, which are the responsibility of LAs and which provide a range of integrated services including health, family support etc. Where independent arrangements are proposed to deliver extended services, schools should, in accordance with [Schedule 13 of the Schools Standards and Framework Act 1998](#) enter into a Transfer of Control Agreement (TofCA) with the body or person who proposes to make use of the school premises. The exception is a maintained nursery school where LAs retain responsibility for the use of the school premises.

9. Who has responsibility for the educational standards of reception age children on a split site – the governing body of the school or the Children's Centre?

Children in reception classes are registered pupils at the school and are therefore the responsibility of the governing body.

10. Who employs the staff in a Children's Centre on school premises – is it the LA?

Arrangements may vary but the majority of staff are likely to be employed by the various service providers.

11. Does a Children's Centre on a school site have to have a body, like a school governing body, to oversee its strategic operation and if so, who determines its procedures and constitution?

The Children's Centre will need a management structure in place to govern the planning and delivery of services. Governance arrangements will vary from Centre to Centre as there is unlikely to be one model that will suit all. With the bringing together of services, there is likely to be a number of pre-existing structures which will come together.

12. Who is responsible for the budget of a Children's Centre on school premises?

LAs are responsible for the funding of Children's Centres that they set up. They may delegate budget responsibility to the Centre manager and the management board/governing body.

13. Will all maintained nurseries become Children's Centres by law?

No. The Government hopes that the vast majority of maintained nursery schools will also have Children's Centre status.

Annex 2 GLOSSARY

Amendment 1
May 2006

Academies – Publicly funded independent schools established under Section 482 of the Education Act 1996.

Achievement and attainment tables (formerly performance tables) – The Department for Education and Skills (DfES) publishes the tables that provide a reliable and easily accessible source of comparative information. The tables report achievements for primary school pupils at the end of Key Stage 2 and secondary pupils at the end of Key Stage 3. The secondary (Key Stage 4) tables report the GCSE (and equivalent) achievements of pupils at the end of Key Stage 4. From 2006 the post-16 tables report A/AS (and equivalent) achievements at Level 3 for schools and colleges.

Value added measures are also published in the primary and secondary tables. The measures ensure that accountability is focused on the progress pupils/students have made from one Key Stage to the next, whatever their starting points.

Admission authority – Local Authorities (LAs) are admission authorities with responsibility for admissions to community and voluntary controlled schools. Schools that handle their own pupil applications are also admission authorities. They send out information about the school and pupil application forms, giving a deadline for receipt.

Admissions register – Contains the details in alphabetical order of all pupils that attend school.

Agreed syllabus – A syllabus of religious education that is not specific to one religion adopted by an LA for teaching in community and controlled schools. The syllabus will be determined and written by an Agreed Syllabus Conference and recommended by the local body that advises the LA on religious education and collective worship (see SACRE below).

Appraisal – The process of assessing how well a member of staff is carrying out his or her job.

Approved educational activity – An activity that takes place outside the school premises and that has been approved by a person authorised in that behalf by the proprietor of the school. The activity is of an educational nature, including work experience and is supervised by a person authorised in 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 have 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 and must contain the names of all the pupils that attend 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 has been agreed by the person authorised in that behalf by the proprietor of the school.

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.

Capital expenditure – Spending on building projects and large items of equipment.

Catchment area – A defined geographical area from which a school takes its pupils.

Casting vote – An additional vote to be used by the chair of governors if an equal number of votes are cast for and against a motion.

Children and Young People's Plan – an overarching strategic plan for children's services published by local authorities under Section 17 of the Children Act 2004.

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 11–18. There are 14 CTCs and one CCTA (City College for the Technology of the Arts) in urban areas across England. CTCs teach the national curriculum to pre-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.

Community governor – A person appointed as a governor who lives or works in the community served by the school, or in the opinion of the governing body, a person who is committed to the good government and success of the school.

Community school – A state school in England and Wales that is wholly owned and maintained by the LA.

Community special school – A state school in England and Wales that is wholly owned and maintained by the LA providing for pupils with special educational needs (SEN).

Connexions – A service that provides a single point of access for all 13–19-year-olds to help them prepare for the transition to work and adult life.

Contingency fund – Money set aside for unexpected costs.

Core subjects – English, mathematics and science are the subjects that must be studied by all pupils at every Key Stage. Progress will be assessed through national assessment tasks and tests (see National curriculum tests below) .

Current expenditure – Spending on the day-to-day running of schools including staff costs, heating and lighting, consumables, etc; sometimes also called recurrent expenditure.

Delegation – A process where one body or person gives another body or person authority to take decisions on a particular matter.

Department for Education and Skills (DfES) – The central government department with responsibility for education.

Designated teacher – An advocate who liaises with other services on behalf of young people in care.

Diocese – The area over which a bishop has jurisdiction.

Disapplication – The term used where parts or all of the national curriculum requirements are lifted or modified in relation to a pupil in specified cases or circumstances.

Early years development and childcare partnership – This partnership plans education locally for children below compulsory school age as well as childcare for children from 0 to 14 years. One partnership in each LA area draws up a plan each year that explains what local early education and childcare services will be provided and includes a list of all local providers of free early education.

Education Welfare Officers – Education Welfare Officers (also known as education social workers or attendance advisers) are employed by LAs to resolve problems of children and young people regularly missing school.

Exclusion – The banning a pupil from school by the headteacher, either temporarily or permanently, on disciplinary grounds.

Ex officio governor – Someone who is automatically a governor/able to attend meetings by virtue of the office they hold, for example a headteacher, parish priest or vicar, i.e. the position of governor comes with the job.

Extended school – A school that provides a range of services and activities often beyond the school day to help meet the needs of its pupils, their families and the wider community.

Fair funding – The term that describes the system of funding for schools introduced in April 1999 that sets the framework for the financial relationship between schools and LAs.

Federation of governing bodies – The coming together under one governing body of not more than five maintained schools.

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 (or, if a school has neither religious character nor a trust deed, is appointed as a foundation governor).

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 to manage their school and decide on their own admissions. At foundation schools the governing body is the employer and the admission authority. 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.

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 to manage their school. It differs from a foundation school, in that it caters for children with special educational needs. 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.

Foundation stage – Covers education provided from three years old to the end of Reception Year.

Fresh Start – A school is given a "Fresh Start" when it is closed and reopened on the same site under the normal school reorganisation procedures. Schools eligible for Fresh Start must be causing concern.

General Teaching Council (GTC) – The professional body for school teachers.

GovernorLine – GovernorLine is the professional helpline offering 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 and the telephone number is freephone 08000 722 181.

GovernorNet – A website providing up to date information on all aspects of school governance. It can be found at www.governornet.co.uk

former) Grant-maintained school – A primary or secondary school previously financed through the Funding Agency for Schools (FAS) after parents had voted to opt out of LA control.

GNVQ – General National Vocational Qualification.

HMCI – Her Majesty's Chief Inspector is the head of Ofsted

HMI – Her Majesty's Inspectors' are appointed by the Chief Inspector to support him or her in their 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. **Inclusion statement** – A statutory statement in the national curriculum to provide effective learning opportunities for all pupils through the school curriculum. Teachers can modify (as necessary) the national curriculum programmes of study to set suitable learning challenges, respond to pupils' diverse learning needs, and address potential barriers to learning and assessment for individuals and groups of pupils.

Independent school – Any school that provides full-time education for five or more pupils of compulsory school age, which is not maintained by an LA or 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 ISCIS – Independent Schools Council information Service.

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.informationcommissioner.gov.uk

In-service Education and Training (INSET) – The professional training and development of teachers working in schools, generally taken as short courses or day conferences.

Instrument of government – A legal document detailing the composition of a governing body of a school.

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.

Lay member – A member appointed to a panel hearing appeals against non-admission or exclusion, being a person without personal experience in managing or providing education in any school (other than as a governor or on a voluntary basis). He or she must not have, or have had, any connection with the school, or any person who is a member of, or employed by the governing body if that might raise doubts about his or her ability to act fairly.

LA – Local Authority (formerly Local Education Authority).

LEA governor – A person appointed as a governor by the LA.

Looked After Children – A child who, as defined in s22(1) of the Children Act 1989, is cared for by the local authority or is provided with accommodation by a local authority for more than 24 hours under a voluntary agreement with his/her parents or who is the subject of a care order.

Maintained nursery school (MNS) – A school providing education for children aged from 3 to 5, 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.

National Assessment Agency (NAA) – NAA is a subsidiary agency of the Qualifications and Curriculum Authority (QCA) and has responsibility for national curriculum tests and ensuring the smooth delivery and modernisation of the examinations system.

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.

National curriculum tests (commonly referred to as SATs) – national tasks/tests set by the National Assessment Agency (NAA).

Non-teaching staff – Members of school staff employed by the governors to provide services in a school other than teaching, such as classroom assistants, cleaners and school secretaries.

NQT – A newly qualified teacher.

Nursery classes – These classes take children aged three and four, usually on a part-time basis. The recommended ratio laid down in guidance is one qualified teacher and one qualified nursery assistant to 26 children (2:26).

Office for Standards in Education (Ofsted) – The body that arranges and sets standards for school inspections.

Open enrolment – All schools must admit pupils up to their standard number (see below) which is calculated according to the physical capacity of the school to accommodate pupils.

Outturn – A statement prepared annually by an LA showing expenditure, actually incurred by them and schools maintained by them, 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 and Skills.

Parent – This includes any person having all the rights, duties, powers, responsibility and authority (see Parental responsibility) which a parent of a child has by law, or who has care of him or her. Therefore, depending on the circumstances, a “parent” may include not only the child’s natural parents, but also others such as step-parents, relatives, co-habitees of either natural parent and foster parents.

Parent 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 and they have since separated or divorced. If the child's parents were not married at the time of the birth, the mother always has parental responsibility and the father may have by agreement or by order of the Court. Parental responsibility passes to the adopter when an adoption order is made. Although a residence order or care order may confer parental responsibility, an LA will not be treated as a parent for certain purposes under the Education Acts.

Parenting contract – A formal 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](#))

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 nominations process.

Penalty notice – Headteachers wishing to issue, or authorise their staff to issue, penalty notices must first gain agreement of the governing body. The school attendance policy (where applicable) must be revised accordingly. Headteachers and deputy and assistant heads must comply with the local code of conduct issued by their LA when issuing penalty notices and provide to the LA a copy of any notice issued.

Peripatetic teacher – One who gives specialist instruction in a number of schools, for example in music.

Published Admission Number (PAN) – The fixed number of children (this may not be less than the indicated admission number) which a school must admit if sufficient applications are received, as published by the admission authority for the school.

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.

Pupils on roll – Pupils registered at a school.

Qualifications and Curriculum Authority (QCA) – The organisation responsible for regulating the national curriculum assessments.

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.

Reception classes – These classes take children at age four and five. Some start children off with half-day sessions. Provided that the majority of the children reach statutory school age within the academic year, reception classes must have no more than 30 children with a qualified teacher.

Regulations – Subordinate legislation deriving its authority from an Act of Parliament, legally binding on governing bodies and others (see also Statutory Instrument).

Resolution – A proposal made formally at a meeting that has been voted on and agreed.

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 schools provide for pupils. For maintained schools this must include the national curriculum, religious education, collective worship, sex and relationship education, and careers education.

School Teachers' Review Body (STRB) – A body appointed by the Prime Minister to examine and report on such matters relating to the statutory conditions of employment of school teachers including teachers' pay.

Significant improvement – A school that requires significant improvement is one that, although it does not require special measures, is performing significantly less well than it might be expected to perform. It will not be monitored but will be re-inspected after a year and expected to have improved significantly by then. If the school has not improved, it may be placed in special measures.

Sixth form requiring significant improvement – A school that requires significant improvement in relation to its sixth form is one that is failing to give its pupils over compulsory school age an acceptable standard of education, or is performing significantly less well than it might be expected to perform. There will again be no monitoring and sixth forms will be re-inspected after one year.

Special Educational Needs (SEN) – Learning difficulties for which a child needs special educational help.

Special measures – A school that requires special measures is one that is failing to give its pupils an acceptable standard of education and whose leadership, management or governance does not demonstrate the capacity to secure the necessary improvement. Schools will receive termly monitoring visits commencing about five to six months after the date of inspection. If a school remains in special measures for two years, it will be re-inspected and a report published.

Specialist schools – It is open to all maintained secondary schools (except those in serious weaknesses or special measures) to apply for specialist status, allowing them to have a special focus on their chosen subject area whilst meeting the national curriculum requirements. Specialist schools work in partnership with private sector sponsors and are supported by additional Government funding.

Sponsor governor – A person appointed by the governing body, who gives, or has given substantial financial assistance (including assistance in kind) to the school.

Staff governors – The headteacher and/or people working at the school who are elected as a governor by people who are paid to work at the school.

Standard number – The number of places available at a maintained (other than special) school for pupils of any age group in which they are admitted. The standard number is an indicator of the school's physical capacity to accommodate pupils. The school's admission authority may fix a different admission number, which may be higher, but not lower than the standard number.

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 he or she should get. 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 and Skills, 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.

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.

Unauthorised absence – This occurs when the school has not given permission for the absence. Where the reason for a pupil's absence cannot be established at registration, the absence shall be recorded as unauthorised. Any subsequent correction to the register recording that absence as authorised shall be made in such a manner that the original entry and the correction are both clearly distinguishable.

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 that employs the staff. The school's land and buildings (apart from the playing fields which are normally vested in the LA) will normally be owned by a charitable foundation.

Annex 3 POLICIES AND OTHER DOCUMENTS THAT GOVERNING BODIES ARE REQUIRED TO HAVE BY LAW

Accessibility plan

All schools

[Disability Discrimination Act 1995: Sections 28D and 28E](#)

[Education Act 1996: Section 316](#)

Admissions policy

Aided schools and foundation schools

Community and controlled schools if the LA transfers the responsibility to them

[The School Standards and Framework Act 1998: Sections 84–91 and 99–103](#), and

Schedules [23](#) and [24](#)

[School Admissions Code of Practice](#)

Annual report to parents (from governors)

Maintained nursery schools

[Education Act 2002: Section 30](#)

[Education \(Governors' Annual Report\) Regulations \(England\) 1999](#) (amended) Education (Governors' Annual Report) Regulations (England) 1999 (amendment) 2002

Attendance targets

All schools

[School Standards and Framework Act 1998: Section 63](#) (amended)

Education (School Attendance Targets (England) Regulations 2005: SI2005/58

Charging policy

All schools

(Community and voluntary controlled consult LA)

[Education Act 1996: Section 457](#)

[Education \(School Sessions and Charges and Remissions Policies\) \(Information\) \(England\) Regulations 1999/2255](#)

Child protection policy

All schools

[Education Act 2002: Section 175](#)

Collective worship (policy on)

All schools

School Standards and Framework Act 1998: [Section 70](#) and [Schedule 20](#)

Complaints procedure

All schools

[Education Act 2002: Section 29](#)

Curriculum policy

All schools

[The Education \(Terms of Reference\) \(England\) Regulations 2000](#)

Freedom of information publication scheme

All schools

[Freedom of Information Act 2000: Section 19](#)

Governors' allowances (schemes for paying)

All schools (where governing body agrees to pay expenses)

[Education \(Governors' Allowances\) \(England\) Regulations 2003/523](#)

Health and safety policy

All schools

Health and Safety at Work Act 1974: Sections 2(3), 3 and 4

[Risk Assessments: Management of Health and Safety at Work Regulations 1999: SI 1999/3242](#)

Home-school agreements

All schools except maintained nursery schools

School Standards and Framework Act 1998: Sections [110](#) and [111](#)

Instrument of government

All schools

[School Governance \(Constitution\) \(England\) Regulations 2003](#)

Minutes of and papers considered at meetings of the governing body and its committees

All schools

[School Government Procedures \(England\) Regulations 2003](#)

Parenting Contracts

All Schools

Anti-social Behaviour Act 2003 Section 19

Penalty Notice

All schools

Education Act 1996 Sections 444, 444A, 444B and 444ZA (dealing with Penalty Notices and failure to secure attendance)

Education (Penalty Notice) (England) (Amendments) Regulations 2004: SI 2004 No. 181(as amended)

Education (Penalty Notice)(England) (Amendment) Regulations 2005: SI 2004 No. 920

Education (Penalty Notice) (England) (Amendment) Regulations 2005: SI 2005 No. 2029

Performance management policy

All schools

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

Guidance: Role of Governing Bodies and Heads 2000

[Education \(School Teacher Appraisal\) \(England\) Regulations 2001/2855](#)

Prospectus

All schools except maintained nursery schools

[Education \(School Information\) \(England\) Regulations 2002/2897](#) (amended)

Pupil discipline (including anti-bullying) policy

All schools

[School Standards and Framework Act 1998: Section 61](#) (amended)

Amendment 1
May 2006

Amendment 1
May 2006

Race equality policy

All schools

Race Relations (Amendment) Act 2000: [Section 2](#) and [Schedule 1A Race Relations Act 1976 \(Statutory Duties Order\) 2001/3458](#)

Register of pupils

All schools

[Education \(Pupil Registration\) Regulations 1995](#) (amended)

Education (Pupil Registration) (Amendment) Regulations 1997: SI 1997/2624

Education (Pupil Registration) (Amendment) (England) Regulations 2001: 2001/2802

Register of business interests of headteacher and governors

All schools

The Financing of Maintained Schools Regulations 1999 [Regulation 25](#) and [Schedule 5\(16\)](#)

Review of staffing structure document

All schools

[Education \(Review of Staffing Structure\) \(England\) Regulations 2005](#)

Risk assessments

See health and safety policy above

School companies

All schools where a company is established

Register: [Companies Act 1985](#)

Education Act 2002: Sections [11](#) and [12](#) and [Schedule 1](#)

Sex education policy

All schools

[Education Act 1996: Section 404](#)

Special educational needs policy

All schools

[Education \(Special Educational Needs\) \(Information\) Regulations 1999](#)

[Special Education Needs Code of Practice 2001](#) DfES 581/2001

Staff appraisal policy

See Performance management policy

Staff discipline conduct and grievance (procedures for addressing) All schools

[School Staffing \(England\) Regulations 2003](#)

Target setting for schools

All schools except maintained nursery schools

[Education \(School Performance Targets\) \(England\) Regulations 2004/2858](#)

Teachers' pay policy

All schools

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

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