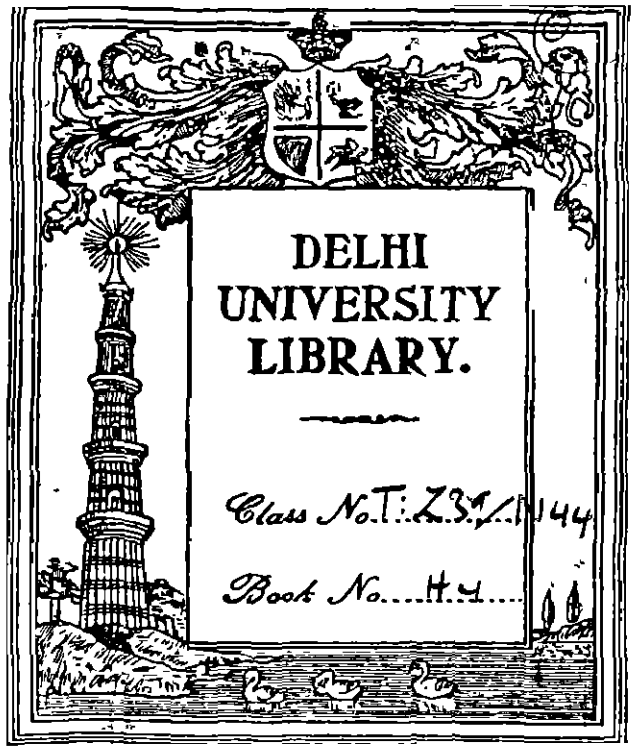

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THE NEW LAW
OF
EDUCATION

BY

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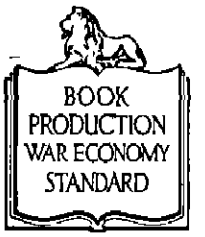
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ALL ENGLAND LAW REPORTS

After cases heard since February, 1936, references are given to this series of reports thus:

Camkin v. *Bishop*, [1941] 2 All E. R. 713.



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FOREWORD

The Education Act, 1944, received the Royal Assent on August 3, 1944. It is one of the most important Acts which this Parliament in its long life has passed, and when put fully into operation it will exercise a profound effect upon the whole future development of this country.

But the one hundred and twenty-two sections of the Act and the nine schedules do not always make easy reading, and as the Earl of Selborne, during the debate on the Bill in the House of Lords, said—

> " It is not very obvious to the layman. . . . I think that in all these matters the outsider must be provided with a handbook. It is no good giving him an Act of Parliament and telling him to get on with it ". (132 House of Lords Official Report, col. 298.)

It appears to me that those responsible for the appearance of the present volume have provided just such a handbook as the Earl of Selborne said was required, and, in addition, have added the text of the Act with detailed explanations of its various sections.

I have carefully read the proofs of the Introduction, which has been written by an experienced administrator, and I consider that its concise practical style makes it an admirable first guide for newcomers to the field of educational administration and a useful reminder even for administrators of long experience.

This general survey of the new statutory system of education should also prove of great value to members of Joint Education Boards, Education Committees and Divisional Executives, all of whom must familiarise themselves with the system for the administration of which they are ultimately responsible. It should likewise assist the managers and governors of voluntary schools, who must decide whether they wish their schools to be controlled, aided, or special agreement schools in the light of the advantages and disadvantages attaching to each type of school. The proprietors of independent schools are not immediately concerned, but they would be well advised, long before Part III of the Act is brought into operation, to acquaint themselves with those provisions of the Act which concern them.

It will be found that in the notes to the sections of the Act all relevant cases decided under similar provisions in the earlier Education Acts are duly noted, and full cross-references have been given and difficulties have been explained. Here again the work is that of an experienced administrator and lawyer.

The responsibility for the statements made in the Introduction and in the notes to the Act rests with the two authors, but I have from time to time made certain suggestions which the authors have felt able to accept.

In thus commending the book to all interested in our national educational system I would say that an Education Act which is designed to effect changes so fundamental over so wide and varied a field of human effort must, of necessity —alas—be a complicated document, full of new terms and phrases, and harking back to sources now deep in the history of our social development. As a practising administrator of long experience I welcome this book—as I feel sure all my colleagues will welcome it—as a reliable friend who will serve us well through many days of complicated negotiation.

October, 1944. EVAN T. DAVIS.

PREFACE

Although the Education Act, 1944, is entitled simply "An Act to reform the law relating to Education in England and Wales" the effect of its 122 sections and 9 schedules is to render obsolete every work on the law relating to education which has ever been written.

The Act is the first step in the Government's programme of post-war reconstruction and reform, and Mr. R. A. Butler, who is now the first Minister of Education, is to be congratulated heartily on piloting his Bill through Parliament in so satisfactory a manner. It may well be said that no Education Bill since the creation of the national system of education in 1870 has had so smooth a passage, in spite of the expected storms of opposition and dissension which at one time seemed likely to arise not only on the religious issues, but also on the proposal to abolish the 169 "Part III" authorities and to concentrate the administration of education in the hands of the county and county borough councils.

On the religious question there is little to say. The religious provisions of the Act appear, at least to a mere administrator, as a fair compromise between the various interests involved, though, as is inevitable with a compromise, no one has been completely satisfied. From an administrative point of view the change from a "dual" system to one in which there are four types of school, county, aided, special agreement and controlled, each with their peculiar rights and duties, to say nothing of "transferred" and "substituted" schools and "schools for displaced pupils", means a considerable increase in the complexity of the administrative arrangements. One can only hope that this will be justified by a rapid improvement in the schools.

The administrative system created by the Act has naturally caused a great deal of heartburning to those authorities who lose their educational functions on 1st April, 1945. It does, in fact, seem inequitable that an authority with a population of 180,000 should lose its status as an education authority simply because it has not hitherto seen fit to seek county borough status, whilst others with less than 50,000 people retain their functions because they have the status of a county borough or a county. But, as Mr. Butler rightly pointed out in the House, he was compelled to take the local government system as he found it and the solution of such problems must be related to local government as a whole and not merely to education. He has made some concessions to the smaller authorities by the creation of a body, the divisional executive, which is new to local government, and to the larger non-county boroughs and urban districts by enabling them to claim exemption from any general scheme of divisional administration for a county and to prepare their own schemes. By these means he claims that local interest in education, which was the main peg upon which the Part III authorities hung their claims, will not only be preserved but stimulated, since the system of divisional administration may cover the whole of the county and not merely the old Part III areas.

The system proposed is both novel and ingenious and will be of considerable value, given goodwill and tolerance on both sides. The relationship in the past between many of the smaller local authorities in the country and their respective county councils has, however, not been entirely happy. It is often felt by the smaller authorities that their position in relation to the county councils is not fully appreciated in Whitehall. Indications have been given, both in Parliament and elsewhere, that the administrative system created for education may be regarded as a model for the reconstruction of other local government services, and in fact the Minister of Health has recently begun conversations on the subject of local government reform within, as he put it, the scope of the existing county and county borough system. The future constitution and functions of local authorities, other than county and county borough councils, is therefore in question. Those who believe that size does not necessarily mean efficiency or that the most democratic form of local government is not that which is furthest removed from the electorate, must now agree on a common policy which would enable the smaller communities to play a responsible part in the administration of their own affairs. In a world in which

government control seems bound to increase, it may be that the smaller authorities should have even more important functions than hitherto.

If the Education Act, 1944, is regarded merely as the framework of a new and progressive educational service, and if all those who are to administer its provisions do everything in their power to provide a better and a fuller education for all, it is likely that the Act will prove to be one of the greatest social reforms of the century. The implementation of its provisions would take a considerable time, even if the only problems were the provision of the necessary buildings and the supply of the required number of teachers. This Act has had priority over other measures of social reconstruction in the Parliamentary time-table. What priority will it have after the war? No doubt there will be set-backs and disappointments. Patience, courage and ability will be needed, especially by those privileged to serve the people in administering the new law. Local authorities and their staffs have risen whole-heartedly to the demands of war and will assuredly face the problems of peace no less worthily.

The purpose of this commentary upon the new Act is to provide an easy and satisfactory way by which all who are concerned with the administration of the educational services may become familiar with the new Act and its various provisions, with its relation to the provisions which it replaces, and with its practical and every-day application. The work has not been burdened with long descriptions of the facts and judgments of decided cases—since a large proportion will in any event now become obsolete—nor has the Act been merely cross-referenced and indexed. What has been attempted, however, is a clear exposition of the Act and its relation to the old law in as concentrated a form as possible. Reference is made to cases which are likely to have any relevance to the new law, as well as to the various Reports issued in recent months which will be of major importance in their relation to educational administration.

Certain circulars dealing with the new administrative system are quoted in full, including the Memorandum issued by the then Board of Education on the Government of Maintained Secondary Schools and Circular 5 of the Ministry which deals with Local Administration and Schemes of Divisional Administration.

The date of writing has been generally assumed to be 1st April, 1945, except in the case of provisions coming into operation or on which action has to be taken before that date.

It is impossible to conclude without expressing thanks to our publishers for their kindness and assistance in the preparation of this book, without which its publication so soon after the Royal Assent to the Act could not have taken place.

October, 1944.

D. J. BEATTIE.
P. S. TAYLOR.

TABLE OF CONTENTS

		PAGE
	Foreword	iii
	Preface	v
	Table of Cases	ix
	Table of Statutes	xiii
I.	INTRODUCTION	
	1. The Educational System before the Act	1
	2. Outline of New System indicating the Main Changes made by the Education Act, 1944	2
	3. The New Statutory System of Education	7
	(i) Education Authorities	7
	(*a*) Central Administration	7
	(*b*) The New Local Education Authorities	10
	(ii) The Obligation to Provide and Receive Education	17
	(*a*) The Duty of the Local Education Authority to provide Education throughout the Three Stages	17
	(*b*) The Classification of Schools and their Administration	23
	(*c*) The Establishment and Discontinuance of Schools	39
	(*d*) The Obligation to Receive Education	41
	(iii) The Training and Remuneration of Teachers	47
	(iv) Religious Education	50
	(v) Further Education	55
	4. Medical and Other Special Services	61
	5. Independent Schools	68
	6. Educational Finance	70
	7. The Transition from the Old to the New System	72
	8. Education in Wales	75
II.	FINANCIAL MEMORANDUM	77
III.	THE EDUCATION ACT, 1944	80
	PART I.—Central Administration	83
	PART II.—The Statutory System of Education	87
	PART III.—Independent Schools	206
	PART IV.—General	213
	PART V.—Supplemental	250
IV.	INDEX	297

TABLE OF CASES

PAGE

A

A.-G. *v.* Christ Church, Oxford (Dean and Chapter), [1894] 3 Ch. 524 ; 63 L. J. (Ch.) 901 ; 71 L. T. 472 223
—— *v.* English. *See* National Society *v.* London School Board, A.-G. *v.* English.
—— *v.* Worcester Corporation (1846), 15 L. J. (Ch.) 398 ; 8 L. T. O. S. 85 258
—— and Board of Education *v.* West Riding of Yorkshire County Council, [1907] A. C. 29 ; 76 L. J. (K. B.) 97 ; 95 L. T. 845 ; 71 J. P. 41 ; 23 T. L. R. 171 ; 51 Sol. Jo. 129 ; 5 L. G. R. 89 142
Allsop *v.* Day (1861), 7 H. & N. 457 ; 31 L. J. (Ex.) 105 ; 5 L. T. 320 ; 8 Jur. N. S. 41 ; 10 W. R. 135 ; 158 E. R. 552 258
Arlidge, *Ex parte*. *See* R. *v.* Chapman, *Ex parte* Arlidge.

B

Belper School Attendance Committee *v.* Bailey (1882), 9 Q. B. D. 259 ; 51 L. J. (M. C.) 91 ; 46 J. P. 438 162
Berkshire County Council *v.* Reading Borough Council, [1921] 2 K. B. 787 ; 90 L. J. (K. B.) 939 ; 125 L. T. 410 ; 85 J. P. 173 ; 10 L. G. R. 386 ; *sub nom.* Berks County Council *v.* Reading Borough Council, Same *v.* London County Council, 37 T. L. R. 642 249
Betton's Charity, *Re*, [1908] 1 Ch. 205 ; 77 L. J. (Ch.) 193 ; 98 L. T. 35 ; 72 J. P. 105 ; 24 T. L. R. 143 ; 6 L. G. R. 638 86
Bevan *v.* Shears, [1911] 2 K. B. 936 ; 80 L. J. (K. B.) 1325 ; 105 L. T. 795 ; 75 J. P. 478 ; 27 T. L. R. 516 ; 9 L. G. R. 1066 158
Blackwell *v.* England (1857), 8 E. & B. 541 ; 27 L. J. (Q. B.) 124 ; 3 Jur. N. S. 1302 ; 120 E. R. 202 ; *sub nom.* England *v.* Blackwell, 30 L. T. O. S. 148 ; 6 W. R. 59 . 255
Blencowe *v.* Northamptonshire County Council, [1907] 1 Ch. 504 ; 76 L. J. (Ch.) 276 ; 96 L. T. 385 ; 71 J. P. 258 ; 23 T. L. R. 319 ; 51 Sol. Jo. 277 ; 5 L. G. R. 551 . 135, 204
Board of Education *v.* Rice, [1911] A. C. 179 ; 80 L. J. (K. B.) 796 ; 104 L. T. 689 ; 75 J. P. 393 ; 27 T. L. R. 378 ; 55 Sol. Jo. 440 ; 9 L. G. R. 652 . . . 204, 238
Bowen *v.* Hodgson (1923), 93 L. J. (K. B.) 76 ; 130 L. T. 207 ; 87 J. P. 186 ; 40 T. L. R. 34 ; 68 Sol. Jo. 187 ; 21 L. G. R. 778 ; 27 Cox C. C. 551 162
Bradley *v.* Sylvester (1871), 25 L. T. 459, *sub nom.*, *Ex parte* Bradley, 36 J. P. 6 . . 285
Broadbent, *Ex parte*. *See* R. *v.* West Riding of Yorkshire Justices, *Ex parte* Broadbent.
Bunt *v.* Kent, [1914] 1 K. B. 207 ; 83 L. J. (K. B.) 343 ; 110 L. T. 72 ; 78 J. P. 39 ; 20 T. L. R. 77 ; 12 L. G. R. 34 ; 23 Cox, C. C. 751 135
Burnham National Schools, *Re* (1873), L. R. 17 Eq. 241 ; 43 L. J. (Ch.) 340 ; 29 L. T. 495 ; 38 J. P. 116 ; 22 W. R. 198 283

C

Christ's Hospital, *Re* (1889), 15 App. Cas. 172 ; 59 L. J. (P. C.) 52 ; 38 W. R. 758 ; *sub nom.* Christ's Hospital (Governors) *v.* Charity Commissioners, 62 L. T. 10 P. C. . 223
Crocker *v.* Plymouth Corporation, [1906] 1 K. B. 454 ; 75 L. J. (K. B.) 375 ; 94 L. J. 734 ; 70 J. P. 204 ; 54 W. R. 391 ; 22 T. L. R. 358 ; 50 Sol. Jo. 292 ; 4 L. G. R. 571 . 138
Cunnington *v.* Cunnington & Noble (1859), 1 Sw. & Tr. 475 ; 28 L. J. (P. & M.) 101 ; 34 L. T. O. S. 45 ; 8 W. R. 3 ; 164 E. R. 820 178

D

Dutton, *Ex parte*. *See* R. *v.* Walton, etc., Justices, *Ex parte* Dutton.
Dyson *v.* Sheffield Corporation, Sadler *v.* Sheffield Corporation, [1924] 1 Ch. 483 ; 93 L. J. (Ch.) 209 ; 88 J. P. 45 ; 40 T. L. R. 259 139

E

Everett *v.* Griffiths, [1924] 1 K. B. 941 ; 93 L. J. (K. B.) 583 ; 131 L. T. 405 ; 88 J. P. 93 ; 40 T. L. R. 477 ; 68 Sol. Jo. 562 ; 22 L. G. R. 330 285

F

Fennell *v.* East Ham Corporation, [1926] Ch. 641 ; 95 L. J. (Ch.) 119 ; 134 L. T. 276 ; 90 J. P. 36 ; 70 Sol. Jo. 324 ; 24 L. G. R. 76 139
Firth *v.* Staines, [1897] 2 Q. B. 70 ; 66 L. J. (Q. B.) 510 ; 76 L. T. 496 ; 61 J. P. 452 ; 45 W. R. 575 ; 13 T. L. R. 394 ; 41 Sol. Jo. 494 275
Foulger *v.* Arding, [1902] 1 K. B. 700 ; 71 L. J. (K. B.) 499 ; 86 L. T. 488 ; 50 W. R. 417 ; 18 T. L. R. 422 ; 46 Sol. Jo. 356 C. A. 113
Fulham Union *v.* Isle of Thanet Union (1881), 7 Q. B. D. 539 ; 50 L. J. (M. C.) 101 ; 44 L. T. 678 ; 45 J. P. 552 ; 29 W. R. 723, C. A. 249

G

Gateshead Union *v.* Durham County Council, [1918] 1 Ch. 146 ; 87 L. J. (Ch.) 113 ; 117 L. T. 796 ; 82 J. P. 53 ; 34 T. L. R. 65 ; 62 Sol. Jo. 86 ; 16 L. G. R. 33, C. A. 248, 262
Gillow *v.* Durham County Council, [1913] A. C. 54 ; 82 L. J. (K. B.) 206 ; 107 L. T. 689 ; 77 J. P. 105 ; 29 T. L. R. 76 ; 57 Sol. Jo. 76 ; 11 L. G. R. 1 . . . . 122, 134
Great Yarmouth Union *v.* Bethnal Green Union (1907), 97 L. T. 440 ; 71 J. P. 422 ; 51 Sol. Jo. 607 ; 5 L. G. R. 1105 249
Greaves *v.* Whitmarsh, Watson & Co., Ltd., [1906] 2 K. B. 340 ; 75 L. J. (K. B.) 633 ; 95 L. T. 425 ; 70 J. P. 415 ; 4 L. G. R. 718 113

H

Hance *v.* Burnett (1880), 45 J. P. 54 262
—— *v.* Fairhurst (1882), 51 L. J. (M. C.) 139 ; 47 J. P. 53 262
Hanson *v.* Radcliffe Urban Council, [1922] 2 Ch. 490 ; 91 L. J. (Ch.) 829 ; 127 L. T. 509 ; 86 J. P. 144 ; 38 T. L. R. 667 ; 66 Sol. Jo. 556 ; 20 L. G. R. 541 C. A. . . . 139
Hares *v.* Curtin, [1913] 2 K. B. 328 ; 82 L. J. (K. B.) 707 ; 108 L. T. 974 ; 76 J. P. 313 ; 10 L. G. R. 753 ; 23 Cox C. C. 411 . . . . . 44, 162

PAGE

Harries *v.* Crawfurd, [1918] 2 Ch. 158; 87 L. J. (Ch.) 465; 119 L. T. 200; 34 T. L. R. 448; 62 Sol. Jo. 621; 16 L. G. R. 663, C. A.; *affirmed*, [1919] A. C. 717; 88 L. J. (Ch.) 477; 121 L. T. 398; 83 J. P. 197; 35 T. L. R. 543; 63 Sol. Jo. 589; 17 L. G. R. 509 285

Harrow School Governors and Murray's Contract, *Re*, [1927] 1 Ch. 556; 96 L. J. (Ch.) 267; 137 L. T. 119; 71 Sol. Jo. 408 224

Hatton, *Ex parte*. *See* R. *v.* Wimbledon Urban District Council, *Ex parte* Hatton.

Hearts of Oak Assurance Co., Ltd. *v.* Flower (James) & Sons, [1936] 1 Ch. 76; 105 L. J. (Ch.) 25; 154 L. T. 156; 52 T. L. R. 5; 79 Sol. Jo. 839 285

Henman *v.* Berliner, [1918] 2 K. B. 236; 87 L. J. (K. B.) 984; 119 L. T. 312; 82 J. P. 300; 34 T. L. R. 456; 16 L. G. R. 707 113

Hewett *v.* Thompson (1889), 58 L. J. (M. C.) 60; 60 L. T. 268; 53 J. P. 103; 5 T. L. R. 246 162

Hodgson's School, *Re* (1878), 3 App. Cas. 857; 47 L. J. (P. C.) 101; 38 L. T. 790, P. C. 223

Holgate's (Archbishop) Free Grammar School at Hemsworth and Grammar School at Barnsley, *Re* (1887), 12 App. Cas. 444; 56 L. J. (P. C.) 52, *sub nom. Re* Hemsworth Free Grammar School, 56 L. T. 212; 35 W. R. 118; 3 T. L. R. 439, P. C. . . . 223

Hunter *v.* Johnson (1884), 13 Q. B. D. 225; 53 L. J. (M. C.) 182; 51 L. T. 791; 48 J. P. 663; 32 W. R. 857; 15 Cox C. C. 600 162

Hussey *v.* Exeter Corporation (1918), 87 L. J. (Ch.) 443; 118 L. J. 13; 82 J. P. 67 . 275

Huth *v.* Clarke (1890), 25 Q. B. D. 391; 59 L. J. (M. C.) 120; 63 L. T. 348; 55 J. P. 86; 38 W. R. 655; 67 L. R. 373 275

I

Isle of Wight County Council *v.* Holland (1909), 101 L. T. 861; 73 J. P. 507; 7 L. G. R. 1182 162

J

Jones *v.* Hughes, [1905] 1 Ch. 180; 74 L. J. (Ch.) 57; 92 L. T. 218; 69 J. P. 33; 53 W. R. 344; 21 T. L. R. 59; 49 Sol. Jo. 67; 3 L. G. R. 1. C. A. 138

K

Knight *v.* Halliwell (1874), L. R. 9, Q. B. 412; 43 L. J. (M. C.) 113; 30 L. T. 359; 38 J. P. 470; 22 W. R. 689 138

L

Leicester Corporation *v.* Stoke-on-Trent Corporation (1918), 88 L. J. (K. B.) 836; 120 L. T. 320; 83 J. P. 45; 17 L. G. R. 172; 26 Cox, C. C. 377 249

Llanbadarnfawr School Board *v.* Charitable Funds (Official Trustees), [1901] 1 K. B. 430; 70 L. J. (K. B.) 307; 84 L. T. 311; 49 W. R. 363, C. A. 283

London County Council, *Ex parte*. *See* R. *v.* Poplar Borough Council (No. 1), *Ex parte* London County Council, R. *v.* Poplar Borough Council (No. 1), *Ex parte* Metropolitan Asylums Board.

——— *v.* Hearn (1909), 78 L. J. (K. B.) 414; 100 L. T. 438; 73 J. P. 211; 25 T. L. R. 303; 7 L. G. R. 312 162

——— *v.* Maher, [1929] 2 K. B. 97; 98 L. J. (K. B.) 492; 142 L. T. 69; 93 J. P. 178; 45 T. L. R. 534; 73 Sol. Jo. 269; 29 Cox C. C. 1; 27 L. G. R. 444 162

——— *v.* Stansell (1935), 154 L. T. 241; 100 J. P. 54; 80 Sol. Jo. 92; *34 L. G. R. 52; 30 Cox C. C. 335* 190

London School Board *v.* Duggan (1884), 13 Q. B. D. 176; 53 L. J. (M. C.) 104; 48 J. P. 742; 32 W. R. 768 162

——— *v.* Faulconer (1878), 8 Ch. D. 571; 48 L. J. (Ch.) 41; 38 L. T. 636; 42 J. P. 692; 26 W. R. 652 283

——— *v.* Jackson (1881), 7 Q. B. D. 502; 50 L. J. (M. C.) 134; 45 J. P. 750; 30 W. R. 47 262

M

Macdonald *v.* Great Western Rail Co., [1930] 1 Ch. 364; 99 L. J. (Ch.) 164; 142 L. T. 460; 28 L. G. R. 171 235

Martin *v.* Eccles Corporation, [1919] 1 Ch. 387; 88 L. J. (Ch.) 195; 120 L. T. 505; 83 J. P. 129; 35 T. L. R. 262; 63 Sol. Jo. 354 139

Metropolitan Asylums Board, *Ex parte*. *See* R. *v.* Poplar Borough Council (No. 1), *Ex parte*, London County Council, R. *v.* Poplar Borough Council (No. 1), *Ex parte* Metropolitan Asylums Board.

Meyers *v.* Hennell, [1912] 2 Ch. 256; 81 L. J. (Ch.) 794; 106 L. T. 1016; 76 J. P. 321; 28 T. L. R. 424; 56 Sol. Jo. 538 285

Meyricke Fund, *Re* (1872), 7 Ch. App. 500; 41 L. J. (Ch.) 553; 26 L. T. 596; 20 W. R. 715 223

Mitchell, *Ex parte*, R. *v.* Hastings Justices. *See* R. *v.* Hastings Justices.

Morris *v.* Carnarvon County Council, [1910] 1 K. B. 840; 79 L. J. (K. B.) 670; 102 L. T. 524; 74 J. P. 201; 26 T. L. R. 391; 54 Sol. Jo. 443; 8 L. G. R. 485, C. A. . . . 91

N

National Society *v.* London School Board, A.-G. *v.* English (1874), L. R. 18 Eq. 608; 44 L. J. (Ch.) 229; 31 L. T. 22; 23 W. R. 2 283

O

Oldham Corporation *v.* Bank of England, [1904] 2 Ch. 716; 73 L. J. (Ch.) 785; 91 L. T. 582; 68 J. P. 584; 53 W. R. 243; 20 T. L. R. 787; 48 Sol. Jo. 724; 2 L. G. R. 1324, C. A. 91

Osborne *v.* Martin (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532; 28 Cox C. C. 465 158

PAGE

P

Poplar and Blackwall Free School, *Re* (1878), 8 Ch D 543; 39 L. T. 88; 42 J. P 678, 26 W R 827 221
Portsmouth Corporation *v Smith, [1885] 10 App Cas. 364, 54 L. J. (Q. B.) 473;* 53 L T 394; 49 J P. 676 . . . . 92, 99
Powell *v.* Lee (1908), 99 L T. 284, 72 J P 353; 24 T L. R 606, 6 L G R 840 . 138
Price *v.* Rhondda Urban Council, [1923] 2 Ch. 372, 93 L J. (Ch) 1, 89 J P 69, 155 L. T Jo 387, 67 Sol Jo. 536; 21 L. G. R 753 139

Q

Queen's School, Chester, *Re*, [1910] 1 Ch 796, 79 L. J. (Ch) 270, 102 L. T. 485; 26 T L. R 297, *54 Sol Jo. 309* . . . 123

R

R. *v* Abingdon Union (1870), L R 5 Q. B 406, 39 L J. (M C) 153, 22 L T 603, 18 W R 981, *sub nom* Henley Union *v.* Abingdon Union, 35 J. P. 139 . 249
— *v.* Andover Rural District Council, *Ex parte* Thornhill, 77 J. P 296; 29 T L R 419; 11 L G. R 996 275
— *v* Bradford-on-Avon Rural District Council, *Ex parte* Thornton (1908), 99 L. T. 89, *72 J P. 348, 6 L. G R 847* . . . 275
— *v.* Braithwaite, [1918] 2 K B. 319, *sub nom* R *v.* Braithwaite, *Ex parte* Dowling, 87 L J (K B) 864, 119 L T 170, 82 J P. 242, 34 T. L. R 406, 16 L. G R. *580, C A* 255
— *v.* Cambridgeshire Justices (1838), 7 Ad. & El 580, 1 Per. & Dav. 249, 1 Will. Woll & H. *698, 8 L. J (M C) 6;* 112 E R. 551 . . . 258
— *v* Chapman, *Ex parte* Arlidge, [1918] 2 K B 298, *87 L J. (K B) 1142, 119 L. T 59;* 82 J P 229, 16 L. G R. 525 . . . 275
— *v.* Godstone Rural Council, [1911] 2 K B. 465; 89 L J (K B) 1184; 105 L T. 207; *75 J P. 413, 27 T L R 424, 9 L G. R. 665* . . . 275
— *v* Griffiths (1851), 17 Q B 164; 117 E R 1243, *sub nom* R *v* St. Martins in-the-Fields Guardians, 15 Jur. 800, 803 . . . 285
— *v* Hastings Justices, *Ex parte* Mitchell (1925), 89 J P *Jo 86* . . 255
— *v.* Norwood (1867), L. R 2 Q B 457, 16 L T. 484, 31 J. P 518, 15 W R 588; *sub nom.* Norwood (Churchwardens and Overseers) *v.* St. Pancras (Churchwardens and Overseers), *36 L. J. (M C.) 91* 249
— *v.* Poplar Borough Council (No 1), *Ex parte* London County Council, R *v.* Poplar Borough Council (No 1), *Ex parte* Metropolitan Asylums Board, [1922] 1 K B 72; 91 L. J. (K. B.) 163; 126 L T. 189, 85 J. P. 273, 37 T L. R 963, 66 Sol. Jo (W. R.) 2, 19 L. G R. 675, 2 B R A 810 . . . 238
— *v* Staines Union, R *v.* Staines Local Board (1893), 62 L J. (Q B) 540, 69 L T 714, 58 J P. 182; 9 T. L R 587, 37 Sol. Jo. 683, 10 R. 292 . . 238
— *v.* Walton, etc., Justices, *Ex parte* Dutton (1911), 75 J. P. 558, 27 T. L. R 569, 9 L. G R. 1231 158
— *v* Westminster Union Assessment Committee, *Ex parte Woodward & Sons, [1917]* 1 K. B. 832, 86 L. J. (K. B.) 698, 116 L T. 601; 81 J. P. 93; 15 L. G. R. 199 255
— *v.* West Riding of Yorkshire Justices, *Ex parte* Broadbent, [1910] 2 K. B. 192; 79 L J (K B) 731, *sub nom* R. *v* Morris, etc., West Riding Justices, *Ex parte* Broadbent, 102 L. T 814, 74 J P 271; 26 T. L R. 419, 8 L. G. R 777 . 158
— *v* Whitby Union (1870), L R. 5 Q B 325, 39 L J (M C) 97, 34 J P. 725, 18 W. R. 785; *sub nom* R *v* Whitby Union, Yorkshire, *Re* Marshall, 22 L. T. 336 . 249
— *v.* Wimbledon U.D C, *Ex parte* Hatton (1897), 77 L. T 599, 62 J. P. 84; 14 T. L. R. *146; 41* Sol. Jo *698* 275
— *v* Worcester Corporation (1905), 69 J P 296, 3 L G. R. 468 . . . 238
Rednall *v.* Beamish (1926), 135 L T. 155, 90 J. P. 153, 42 T L. R. 538, 24 L. G. R. 391, 28 Cox C C. 245 162
Richardson *v* Abertillery Urban District Council, Thomas *v.* Abertillery Urban District Council (1928), 44 T. L R. 333 275
Ross *v.* Charity Commissioners (1882), 7 App. Cas. 463; *sub nom* Ross *v.* Charity Commissioners, *Re* St Dunstan in-the-East, 51 L J (P C) 106, 47 L. T 172, P. C. 223

S

Sadler *v.* Sheffield Corporation *See* Dyson *v.* Sheffield Corporation, Sadler *v.* Sheffield Corporation
Sale *v* Phillips, [1894] 1 Q B 349, 63 L. J. (M C) 79, 70 L. T. 559, 58 J P. 460; 10 T. L R. 222, 38 Sol Jo 237 258
Short *v.* Poole Corporation, [1926] Ch 66; 95 L J (Ch) 110, 134 L. T. *110;* 90 J P. 25; 42 T. L. R. 107, 70 Sol Jo 245, 24 L G R 14 C A . . . 139
Shrimpton *v.* Hertfordshire County Council (1911), 104 L T. 145; 75 J. P 201, 27 T L R. 251, 55 Sol Jo 270, 9 L. G R 397, H L. . . . 191
Smith *v* Macnally, [1912] 1 Ch 816, 81 L. J. (Ch) 483, *106 L. T. 945, 76* J. P. 466, 28 T. L R 332; 56 Sol Jo. 397, 10 L. G R 431 . . . . 139, 147
Southwark Union *v* London County Council, [1910] 2 K B. 559, 79 L J. (K B) 826, 102 L. T. 717; 74 J. P 250; 8 L G R. 536 262
Stevens *v* Berwick-upon-Tweed Corporation (1835), 4 Dowl 277, 1 Har & W 517; 3 Nev. & M. M C. 150 275
Stoke-on-Trent Borough Council *v.* Cheshire County Council, [1915] 3 K. B 699, 85 L. J (K. B) 36, 113 L. T 750, 79 J P. 452, 13 L G. R 1077 . . . 249
Symes *v* Brown (1913), 109 L. T. 232, 77 J. P. 345, 29 T. L. R 473, 11 L G R 1171, 23 Cox C. C. 519 162

PAGE

T

Thomas *v.* Abertillery Urban District Council. *See* Richardson *v.* Abertillery Urban District Council Thomas *v.* Abertillery Urban District Council.
Thornhill, *Ex parte*. *See* R. *v.* Andover Rural District Council, *Ex parte* Thornhill.
Thornton, *Ex parte*. *See* R. *v.* Bradford-on-Avon Rural District Council, *Ex parte* Thornton.

W

Walker *v.* Cummings (1912), 107 L. T. 304; 76 J. P. 375; 28 T. L. R. 442; 10 L. G. R. 728; 23 Cox C. C. 157 162
——— *v.* Laxton (1894), 70 L. T. 690; 58 J. P. 574; 10 R. 404 164
Walthamstow Urban District Council *v.* Henwood, [1897] 1 Ch. 41; 66 L. J. (Ch.) 31; 75 L. T. 375; 61 J. P. 23; 45 W. R. 124; 41 Sol. Jo. 67 255
West Suffolk County Council *v.* Olorenshaw, [1918] 2 K. B. 687; 88 L. J. (K. B.) 384; 120 L. T. 94; 82 J. P. 392; 16 L. G. R. 711 204
Wilford *v.* West Riding of Yorkshire County Council, [1908] 1 K. B. 685; 77 L. J. (K. B.) 436; 98 L. T. 670; 72 J. P. 107; 24 T. L. R. 286; 6 L. G. R. 244; *sub nom.* Walford *v.* West Riding of Yorkshire County Council, 52 Sol. Jo. 263 204
Woodward and Sons, *Ex parte*. *See* R. *v.* Westminster Union Assessment Committee, *Ex parte* Woodward.
——— *v.* Oldfield, [1928] 1 K. B. 204; 66 L. J. (K. B.) 796; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363 . . . 262

Y

Young *v.* Cuthbert, [1906] 1 Ch. 451; 75 L. J. (Ch.) 217; 94 L. T. 191; 70 J. P. 130; 54 W. R. 296; 22 T. L. R. 251; 4 L. G. R. 356 138

TABLE OF STATUTES

NOTE.—In the case of the Education Act, 1944, the page on which each section or sub-section is printed in extenso is indicated by black figures.

PAGE

7 Edw. 1. (Statute De Viris Religiosis, 1279) 224
6 & 7 Will. 4, c. 86—15 *Statutes* 700. (Births and Deaths Registration Act, 1836) 230
7 Will. 4 and 1 Vict. c. 23—15 *Statutes* 712. (Births and Deaths Registration Act, 1837) 230
4 & 5 Vict. c. 38—7 *Statutes* 274. (School Sites Act, 1841) . . 100, 227
s. 2 (3) 222, 223
s. 14 244
7 & 8 Vict. c. 37—7 *Statutes* 282. (School Sites Act, 1844) . 100, 227
11 & 12 Vict. c. 43—11 *Statutes* 270. (Summary Jurisdiction Act, 1848) . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218
s. 11 . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218
12 & 13 Vict. c. 49—7 *Statutes* 284. (School Sites Act, 1849) . 100, 227
14 & 15 Vict. c. 24—7 *Statutes* 286. (School Sites Act, 1851) . . 100, 227
15 & 16 Vict. c. 49—7 *Statutes* 287. (School Sites Act, 1852) . 100, 227
16 & 17 Vict. c. 137—2 *Statutes* 320. (Charitable Trusts Act, 1853) . . 100
s. 16 . . . . . 112, 123
18 & 19 Vict. c. 124—2 *Statutes* 346. (Charitable Trusts Amendment Act, 1855) 100
18 & 19 Vict. c. 131—7 *Statutes* 288. (School Grants Act, 1855) . . 227
21 & 22 Vict. c. 88—15 *Statutes* 724. (Births and Deaths Registration Act, 1858) 230
23 & 24 Vict. c. 11—7 *Statutes* 239. (Endowed Schools Act, 1860) . 202, 223
23 & 24 Vict. c. 112—2 *Statutes* 363. (Charitable Trusts Act, 1860) . . 100
s. 2 203
25 & 26 Vict. c. 112—2 *Statutes* 370. (Charitable Trusts Act, 1862) . . 100
31 & 32 Vict. c. 37—8 *Statutes* 230. (Documentary Evidence Act, 1868) . 86
31 & 32 Vict. c. 32—7 *Statutes* 240. (Endowed Schools Act, 1868) . 202, 223
31 & 32 Vict. c. 72—3 *Statutes* 381. (Promissory Oaths Act, 1868) . 84, 85
s. 11 84
Sched. 84
32 & 33 Vict. c. 56—7 *Statutes* 241. (Endowed Schools Act, 1869) . 202, 223
s. 5 223
s. 9 . . . . . 203, 223
ss. 10–27 223
s. 28 203
ss. 29–33 223
s. 34–36 . . . . . 222, 223
ss. 37, 38 223
s. 39 . . . . . 222, 223
ss. 40–51 223
32 & 33 Vict. c. 62—1 *Statutes* 573. (Debtors Act, 1869)—
s. 5 . . . . . 187, 198
32 & 33 Vict. c. 110—2 *Statutes* 372. (Charitable Trusts Act, 1869) . . 100
33 & 34 Vict. c. 75—7 *Statutes* 120. (Elementary Education Act, 1870) . 2, 24, 83, 115, 138
s. 3 84
s. 7 140
s. 14 . . . . . 143, 287
(2) 50
s. 75 203
s. 83 . . . . . 86, 270
s. 100 10

PAGE

36 & 37 Vict. c. 87—7 *Statutes* 258. (Endowed Schools Act, 1873) . 202, 223
s. 13 222
37 & 38 Vict. c. 87—7 *Statutes* 263. (Endowed Schools Act, 1874) . 202, 223
37 & 38 Vict. c. 88—15 *Statutes* 737. (Births and Deaths Registration Act, 1874) 230
38 & 39 Vict. c. 29—7 *Statutes* 275. (Endowed Schools (Vested Interests) Act Continuance Act, 1875) . 202, 223
38 & 39 Vict. c. 55—13 *Statutes* 623. (Public Health Act, 1875)—
s. 157 201
39 & 40 Vict. c. 79. (Elementary Education Act, 1876)—
s. 4 41
40 & 41 Vict. c. 60—13 *Statutes* 788. (Canal Boats Act, 1877) . . 45
41 & 42 Vict. c. 33—11 *Statutes* 679. (Dentists Act, 1878) . 182, 183, 216, 217, 256
42 & 43 Vict. c. 49—11 *Statutes* 323. (Summary Jurisdiction Act, 1879) . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218
s. 35 . . . . . 186, 198
44 & 45 Vict. c. 24—11 *Statutes* 352. (Summary Jurisdiction (Process) Act, 1881) . . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218
45 & 46 Vict. c. 9—8 *Statutes* 239. (Documentary Evidence Act, 1882) . 86
Sched. 86
47 & 48 Vict. c. 43—11 *Statutes* 355. (Summary Jurisdiction Act, 1884) . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218
47 & 48 Vict. c. 64—4 *Statutes* 411. (Criminal Lunatics Act, 1884) . 176, 266
47 & 48 Vict. c. 75—13 *Statutes* 803. (Canal Boats Act, 1884) . . 45
50 & 51 Vict. c. 49—2 *Statutes* 382. (Charitable Trusts Act, 1887) . . 100
51 & 52 Vict. c. 41—10 *Statutes* 686. (Local Government Act, 1888)—
s. 49 267
s. 100 . . . . . 90, 91
51 & 52 Vict. c. 42—3 *Statutes* 385. (Mortmain and Charitable Uses Act, 1888) 223, 224
s. 1 272
s. 10 224
52 & 53 Vict. c. 40—7 *Statutes* 265. (Welsh Intermediate Education Act, 1889) . . 75, 90, 202, 223, 240, 241, 242
s. 9 . . . 75, 241, 242, 294
52 & 53 Vict. c. 63—18 *Statutes* 992. (Interpretation Act, 1889)—
s. 12 (7) 84
s. 19 . 201, 205, 208, 211, 212, 240, 251, 255, 262
s. 26 254
s. 37 . . . 88, 250, 251
s. 38 270
53 Vict. c. 5—11 *Statutes* 17. (Lunacy Act, 1890) 175, 266
s. 25 . . . . . 175, 266
53 & 54 Vict. c. 59—13 *Statutes* 824. (Public Health Acts Amendment Act, 1890) 201
53 & 54 Vict. c. clxxvi. (Local Government Board Provisional Orders Confirmation (No. 6) Act, 1890) . . 267
54 & 55 Vict. c. 17—2 *Statutes* 394. (Charitable Trusts (Recovery) Act, 1891) 100
54 & 55 Vict. c. 65—11 *Statutes* 144. (Lunacy Act, 1891) . . . 175

References to Statutes apply to Halsbury's Statutes of England

PAGE

54 & 55 Vict c. 73—2 *Statutes* 396. (Mortmain and Charitable Uses Act, 1891) . . . 223, 224

55 & 56 Vict. c. 11—2 *Statutes* 398. (Mortmain and Charitable Uses Amendment Act, 1892) . 223, 224

57 & 58 Vict. c. 35—6 *Statutes* 1236. (Charitable Trusts (Places of Religious Worship) Amendment Act, 1894) 100

59 & 60 Vict. c 14—18 *Statutes* 1021 (Short Titles Act, 1896) 227

62 & 63 Vict c. 22—11 *Statutes* 363. (Summary Jurisdiction Act, 1899) . 155, 164, 178, 183, 190, 193, 195, 206, 208, 211, 215, 218

62 & 63 Vict c 33—7 Statutes 124 (Board of Education Act, 1899) 7, 8, 10, 85, 270

s 1 (1) . . 84
(2) . . 84
s 2 (2) . . 85
s 4 . 10, 87
s 6 . 84
s 7 (2)–(4) . . 86
s 8 (1) . . 84
(2) . . 84

2 Edw. 7, c. 42. (Education Act, 1902) 2, 11, 88, 115, 138

s 7 . . 138
s 11 . . . 260
s 13 . . . 202
s 20 . 89
(b) . . . 260

3 Edw 7, c. 24—7 *Statutes* 126. (Education (London) Act, 1903)—
Sched I . 202

6 Edw. 7, c 57. (Education (Provision of Meals) Act, 1906) 61, 184
s. 3 . 61

7 Edw. 7, c. 43—7 *Statutes* 126. (Education (Administrative Provisions Act, 1907) 181
s. 13 62
s 16 (1) . . 87

7 Edw. 7, c. 53—13 *Statutes* 911 (Public Health Acts Amendment Act, 1907) . . . 201

8 Edw. 7, c. 39—7 *Statutes* 272. (Endowed Schools (Masters) Act, 1908) . . . 202, 223

3 & 4 Geo 5, c. 28—11 *Statutes* 160 (Mental Deficiency Act, 1913) . 67, 152, 192, 206, 259, 266

s. 1 . . 153
s 2 (1) (b) (v) . . . 291
(2) . 193, 294
s 3 . . . 266
s. 6 . . . 266
ss 8, 9 . . 266
s. 27 . . . 152, 193
s 28 275
s. 30 (iv) . . 193, 294
s. 31 . . 193, 291, 294
s. 44 (3) . . 249
s. 50 . . 266
s 51 (2) . . 266
s 55 (3) 266
s. 66 . . . 275

4 & 5 Geo 5, c. 45 (Elementary Education (Defective and Epileptic Children) Act, 1914)—
s 4 260

7 & 8 Geo 5, c. 64 (Representation of the People Act, 1918)—
s 3 . . . 261

8 & 9 Geo. 5, c 39—7 *Statutes* 128 (Education Act, 1918) . 2, 55, 68, 105, 164, 165, 167, 168
s 42 . . 241, 242

PAGE

9 & 10 Geo 5, c. 21—3 *Statutes* 416. (Ministry of Health Act, 1919)—
s. 3 (1) (d) . . 182

9 & 10 Geo 5, c. 91—3 *Statutes* 451. (Ministry of Agriculture and Fisheries Act, 1919)—
s. 7 (2) . . . 291
(i) . . . 294

10 & 11 Geo 5, c 65—8 *Statutes* 637. (Employment of Women, Young Persons and Children Act, 1920)—
s. 4 294

11 & 12 Geo 5, c 51—7 *Statutes* 130 (Education Act, 1921) 2, 17, 20, 32, 39, 41, 44, 65, 68, 72, 88, 91, 101, 138, 151, 158, 171, 181, 225, 233, 262, 263, 272, 275, 291, 292, 294

s 1 . . 8 84, 270
s. 2 . 10, 87, 270
s 3 . 149, 232, 253, 290
(1) . 87, 89, 260
(2) . . 89, 183, 232, 253, 260
(4) . . 260
s. 4 . . . 12, 90, 274
(2) (a), (b) . 275
(5) 275
s. 5 . 87, 89, 90, 260, 290
s 6 . . . 272, 274
s. 8 . . 272
s. 10 . . . 275
ss. 11, 13 . . 93, 105, 165
s. 14 . 93, 105, 165
(4) . . . 196
s. 15 . 93, 105, 165
(1) . . 108
s. 16 . . 93, 105, 165
s. 17 . . 93, 98, 151
(1) . . . 39
(2) . . . 103, 106
(4) 111
s. 18 . . 39, 110
(1) 111
(2) . . . 204
(5) . . . 265
s 19 . . 110, 213, 265
(1) . 39
s. 20 . . 19, 95
s. 21 . . . 99
s. 22 . . . 187
s 23 . . 185, 186, 191
s. 27 . . . 151, 265
(1) . 102
(a) . 50, 140, 142
(b) . 140, 142, 145
(c) . 214
s 28 . 100, 135, 143
(2) . . 50, 287
s. 29 . 100, 135, 136, 151, 215
(1) . . . 135
(2) . 32, 133, 135
(a) . . 137, 139
(b) . . 214
(d) . . 118, 151
(5) . . . 204
(b) . . 137
(c) . 50, 137
(6) . . . 135, 137
(8) . . . 135
(9) . 204
s. 30 . . 32, 123, 128, 135, 151
(1) . . . 121, 128
(2) . . 122, 129
(4) . . . 132, 151
(5) . . . 151
(b) 128
s 31 . 122, 123, 129, 151
(1) . . . 260
s. 32 . . 123, 151
s 33 . . 123, 131, 151
s 34 . . 123, 151
s 35 . . 123, 135, 151

PAGE

11 & 12 Geo. 5, c. 51—7 *Statutes* 130. (Education Act, 1921)—*continued.*
s. 35 (1) 32, 123
s. 36 . . . . . 122, 123, 131, 151
s. 37 . . . . . 196, 197
s. 38 . . . . . 102, 110, 282
s. 39 282
s. 40 . . . . . 112, 265
(2) 113
s. 41 202
s. 42 . . . . . 41, 156, 157
s. 43 158
s. 44 . . . . . 156, 160
s. 45 . . . . . 41, 156, 163, 164
s. 46 . . . . . 41, 156, 157, 162, 258, 265
(2), (4) 162
(5) 41, 163
s. 47 156
s. 48 156
s. 49 . . . . . 41, 44, 156, 162
(b) 44
s. 50 . . . . . 45, 156, 157, 163
s. 51 . . . . . 65, 152, 153, 156, 268
s. 52 . . . . . 152, 153, 156, 268
(2) 153
s. 53 . . . . . 152, 153, 156, 268
s. 54 (1) 65
s. 55 . . . . . 152, 153, 156, 261, 268
(1) 152, 153
(3) 152, 153
(4) 231
s. 56 . . . . . 152, 153, 156, 268
s. 57 . . . . . 152, 153, 156, 265, 268
s. 58 . . . . . 152, 153, 156, 268
ss. 59–61 . . . . . 152, 153, 156, 268
s. 62 . . . . . 99, 152, 153, 156, 268
s. 63 . . . . . 152, 153, 156, 268
(1) (c) 214
ss. 64–68 . . . . . 152, 153, 156, 268
s. 69 . . . . . 152, 153, 156, 263, 268
s. 70 . . . . . 61, 74, 110, 152, 153, 156, 164, 169, 179, 183, 232, 235, 260, 290
(1) 55
(2) 89, 183, 253
s. 71 . . . . . 110, 149, 164, 191
(c) 219
s. 72 (1) 51
(2) 51
(3) 51
s. 73 . . . . . 102, 110
s. 74 . . . . . 165, 196, 220
s. 75 . . . . . 55, 165, 168, 176, 196, 270
s. 76 . . . . . 55, 165, 168, 175, 176, 270
(2) 175
(3) 214
s. 77 . . . . . 55, 165, 168, 175, 176, 270
ss. 78, 79 . . . . . 55, 165, 168, 176, 270
s. 80 . . . . . 62, 180, 182, 183, 217
(1)–(3) 180
s. 81 . . . . . 62, 180
ss. 82–84 . . . . . 61, 184
s. 85 . . . . . 50, 184
s. 86 187
s. 87 190
s. 88 191
s. 93 270
s. 94 195
s. 95 (a)-(d) 195
ss. 109–112 . . . . . 100, 227
s. 113 . . . . . 91, 100, 227
ss. 114, 115 . . . . . 100, 227
s. 116 227
s. 117 . . . . . 224, 227
s. 118 . . . . . 240, 249
(2) 71
(4) 7
(5) 254
(6) 182
s. 119 . . . . . 214, 240
s. 120 240
s. 121 123

PAGE

11 & 12 Geo. 5, c. 51—7 *Statutes* 130. (Education Act, 1921)—*continued.*
s. 123 (2) 228
s. 127 248
s. 128 . . . . . 248, 249
s. 133 215
s. 134 215
ss. 135, 136 230
s. 138 (1) 157, 265
ss. 141–143 231
s. 147 . . . . . 68, 218
s. 148 . . . . . 13, 136
(1) 92
s. 149 14
s. 150 . . . . . 7, 238
s. 151 238
s. 152 (1), (2) 228
ss. 153, 154 218
s. 155 68
s. 156 229
(2) (a)–(e) 229
s. 158 (1), (2) 254
s. 159 231
s. 163 . . . . . 10, 87
s. 164 221
ss. 166, 167 201
s. 169 (5) 89, 267
s. 170 . . . . . 102, 258
(1) 99, 263, 265
(3) 20, 164
(6) 262
(8) 265
(11) 261
(12) 262
(13) 259
(14) 265
(15) 121, 262
(16) 90, 91
(17) 264
(22) 262
s. 173 (1), (2) 271
Sched. I 90, 274
Part I (1), (a)–(c) 274
(2) 274
Sched. II 90
Sched. III 132, 285
(4) 132, 285
(8) 231, 285
(9) 132, 285
Sched. IV 282

12 & 13 Geo. 5, c. 60—11 *Statutes* 198. (Lunacy Act, 1922) 175, 266

13 & 14 Geo. 5, c. 38—7 *Statutes* 226. (Education (Institution Children) Act, 1923) . . . 23, 91, 152, 233, 248, 294
s. 1 249
(7) 249

15 & 16 Geo. 5, c. 90—14 *Statutes* 617. (Rating and Valuation Act, 1925)—
s. 9 . . . . . 289, 290
s. 19 275

16 & 17 Geo. 5, c. 9—7 *Statutes* 229. (Economy (Miscellaneous Provisions) Act, 1926)—
s. 12 294

16 & 17 Geo. 5, c. 48—15 *Statutes* 768. (Births and Deaths Registration Act, 1926) 230

17 & 18 Geo. 5, c. 33—11 *Statutes* 200. (Mental Deficiency Act, 1927)—
s. 1 153

18 & 19 Geo. 5, c. 12—7 *Statutes* 651. (Representation of the People (Equal Franchise) Act, 1928)—
s. 2 261

19 & 20 Geo. 5, c. 17—10 *Statutes* 883. (*Local Government Act*, 1929) 88, 290
ss. 21–28 230
s. 75 . . . . . 89, 179, 253
s. 82 242
(1) 294

PAGE

19 & 20 Geo 5, c. 17—10 *Statutes* 883 (Local Government Act, 1929)—*continued*
s 137 . . . 179
Sched X . . . 248
Sched XII . 179
Part VI . 179

20 Geo 5, c. 17—12 *Statutes* 968 (Poor Law Act, 1930)—
s 4 . . . 275
s 14 262

20 & 21 Geo 5, c 23—23 *Statutes* 154 (Mental Treatment Act, 1930) 175, 266
s 1 . . 176, 266
s 3 176
s 5 . 176, 266
s. 6 . . . 176
s. 7 . 275
ss 8, 9 . 176
s. 22 275
s 50 . . 176
s 51 (2) . 176
s 55 (3) 176

21 & 22 Geo 5, c. 6—24 *Statutes* 173 (Education (Local Authorities) Act, 1931) 88, 89, 91, 233, 260, 290, 294
s 1 (1) . . . 88
(2) . . 88

22 & 23 Geo 5, c. 48—25 *Statutes* 470. (Town and Country Planning Act, 1932) . 201

23 Geo 5, c. 12—26 *Statutes* 168 (Children and Young Persons Act, 1933) 12, 90, 91, 163, 194, 230, 268, 269, 272, 273, 280
s 10 . 45
(1)–(3) 291
s 18 . 46, 194, 269
(1), (2) . 291
ss. 19, 20 46, 194, 269, 270
s 21 . 46, 194, 269
s. 22 . 46, 194, 269
(3), (3A) 292
ss 23–27 . 46, 194, 269
s. 28 . . 46, 194, 269
(1), (3) . 194, 195
s 29 . 46, 194, 269
s. 30 46, 194, 269, 294
s. 46 (3) . 294
s 52 57
(3) 268
s. 54 57, 268
s 60 163
s 61 (1) (*c*) 292
s. 62 45, 46, 163, 164
s 63 . . 46
s. 67 (1) . 163
s 96 . . 273
(1) . . 269, 292, 294
(2) . 292, 294
(3) 292
(4) 292, 294
(5)–(7) . 294
s. 97 . 269, 294
s. 104 . . 294
s 106 (2) (*b*) . 294
s 107 . . 194
Sched III 163, 164

23 & 24 Geo. 5, c 29—26 *Statutes* 130 (Education (Necessity of Schools Act, 1933) 39, 110, 111, 213, 233, 294

23 & 24 Geo 5, c 36—26 *Statutes* 641. (Administration of Justice (Miscellaneous Provisions) Act, 1933—
s. 4 151 238

23 & 24 Geo 5, c. 31—26 *Statutes* 295. (Local Government Act, 1933) 92, 93, 147, 225, 226, 233, 235, 242, 253, 255, 260, 267, 275, 280
s 1 90, 281

PAGE

23 & 24 Geo. 5, c 31—26 *Statutes* 641 (Local Government Act, 1929)—*continued*
s. 1 (1), (2) . 259
s 17 . 282
s 76 . . 280
s 85 . . 274
(5) 274
s. 94 . . 49, 292, 294
ss 98-117 . 225
s 118 225, 292, 294
ss 119, 120 225
s 121 136
ss. 122–124 . 225
ss 129 149 234, 235
s. 150 . 234, 235
(2), (3) 234, 272, 273
ss. 151–155 . 234, 235
ss 156–160 . . 101, 227
ss 161, 162 101, 227, 228
ss. 163–165 . 101, 226, 227, 228, 267
ss 166–179 *101, 227*
s 180 (1) 290
ss 219–243 . 228
s 267 . . . 220
s 268 . 221
s 283 (1) . . 275
s 286 . . 254, 255
s. 290 . 267
(2)–(5) . . 229
s 292 . 287
s. 293 . 271, 273
s. 296 (2) 282
s. 299 . 109, 254
s. 305 . 92, 235, 256, 260, 261, 267, 290
s. 308 (2) . . . 229
Sched. I, Part I . 90, 260
Sched. III, Part V 275
Sched IV 234, 235, 269, 272, 273
4 (2) . 235
Sched VII 101, 227, 292, 294

25 Geo 5, c 8—28 *Statutes* 499. (Unemployment Insurance Act, 1935) 280
s 2 . 194
s 37 194
s. 76 . . 296
s 77 . 58
s 78 . . 268, 293
(2) (*a*), (4) . 293
s 79 (1) . 296
s. 80 (1) . 296
(2) (*a*) . 296
s. 81 (1) (*a*) 296
(*b*) . 293
(3) . . . 293
s. 83 (1) . 296
s 87 (1) . 293
s. 104 (1) . . 293
(2) . . 296
s. 112 . . 296
s 113 58
(1) . . . 293

25 & 26 Geo 5, c 46—28 *Statutes* 125. (Money Payments (Justices Procedure) Act, 1935) 187, 198

26 Geo 5 & 1 Edw. 8, c. 32—29 *Statutes* 1064 (National Health Insurance Act, 1936) 92

26 Geo 5 & 1 Edw. 8, c 41—29 *Statutes* 117 (Education Act, 1936) 2, 24, 29, 30, 91, 94, 116, 117, 118, 233, 284, 295
s 1 . 156
(1) . 41
s 2 . . . . 41, 156
s. 3 . . 156
s 4 . 156
s. 5 . . 156
s 6 . 156
s 7 . . 156
s. 8 . 118, 137, 144, 284

PAGE

26 Geo. 5 & 1 Edw. 8, c. 41—29 *Statutes* 117. (Education Act, 1936)—*continued*
s. 8 (2) . . . 29, 283, 284
s. 9 . . . 145, 151, 284, 287
(1) 285
(a) 146
s. 10 . . . 102, 137, 151
(1) (e) . . . 112, 113
s. 12 . . . . 51, 145, 287
s. 13 . . . . . 51, 142
s. 15 . . . . . 99, 118
(1) 263
s. 16 (3) 265
Sched. II 137
Sched. III . . . 112, 113

26 Geo. 5 & 1 Edw. 8, c. 40—29 *Statutes* 309. (Public Health Act, 1936) . 201
ss. 14–70 201
s. 71 . . . . 200, 201
s. 201 275
s. 273 . . . . . *275*

26 Geo. 5 & 1 Edw. 8, c. 50—30 *Statutes* 437. (Public Health (London) Act, 1936) 266

26 Geo. 5 & 1 Edw. 8, c. 51. (Housing *Act, 1936)* 120

1 Edw. 8 & 1 Geo. 6, c. 38—30 *Statutes* 116. (Ministers of the Crown Act, 1937) 84, 85

1 Edw. 8 & 1 Geo. 6, c. 25—30 *Statutes* 179. (Education (Deaf Children) Act, 1937) . . 65, 91, 152, 233, 295

1 Edw. 8 & 1 Geo. 6, c. 46—30 *Statutes* 712. (Physical Training and Recreation Act, 1937) . . . 97, 170, 188
s. 1 . . . . 187, 188, 295
s. 2 . . . . 187, 188, 295
s. 3 . . . . . 187, 188
(1), (3) 295
s. 6 . . . . . *295*
s. 8 . . . . . 187, 188
(2) *295*

1 Edw. 8 & 1 Geo. 6, c. 67—30 *Statutes* 201. (Factories Act, 1937)—
s. 152 292
(1) 295

1 Edw. 8 & 1 Geo. 6, c. 68—30 *Statutes* 385. (Local Government Superannuation Act, 1937—
s. 40 92

1 & 2 Geo. 6, c. 8—31 *Statutes* 807. (Unemployment Insurance Act, 1938)—
s. 1 296

1 & 2 Geo. 6, c. 16—31 *Statutes* 569. (Housing (Financial Provisions) Act, *1938* *120*

1 & 2 Geo. 6, c 40—31 *Statutes* 365. (Children and Young Persons Act, 1938) . 12, 90, 91, 230, 268, 269, 272, 273
s. 3 295
s. 4 (1), (2) 295
s. 6 (1), (2) 295

1 & 2 Geo. 6, c. 69—31 *Statutes* 378. (Young Persons (Employment) Act, 1938) 194, 230

2 & 3 Geo. 6, c. 40—32 *Statutes* 259. (London Government Act, 1939) 260, 267
s. 61 (1) 295
s. 64 . . . . . 292, 295
s. 85 . . . . . *292, 295*
s. 106–108 . . . . *228, 267*
s. 189 . . . . . 229, 267
s. 206 . . . . . 260, 267
Sched. V 292, 295

2 & 3 Geo. 6, c. 60. (The Senior Public Elementary Schools (Liverpool) Act, 1939) 117, 118, 295

2 & 3 Geo. 6, c. 62—32 *Statutes* 946. (Emergency Powers (Defence) Act, 1939) 252

PAGE

2 & 3 Geo. 6, c. 94—32 *Statutes* 1118. (Local Government Staffs (War Service) Act, 1939). 93, 233, 235, 237, 269
s. 1 234
(4) 234
s. 9 233
s. 14 233
Sched. I, col. I, para. 15, 16 233, 234

2 & 3 Geo. 6, c. 95—32 *Statutes* 1131. (Teachers Superannuation (War Service) Act, 1939) 233

2 & 3 Geo. 6, c. 111—32 *Statutes* 1223. *(Education (Emergency) Act, 1939).* 91, 94, 156, 233, 269, 295

6 & 7 Geo. 6, c. 21—36 *Statutes* 334. (War Damage Act, 1943)—
s. 2 265

6 & 7 Geo. 6, c. 29—36 *Statutes* 239. (Town and Country Planning(Interim Development) Act, 1943) . 120, 201

6 & 7 Geo. 6, *No. 3*—36 *Statutes* 88. (Diocesan Education Committees Measure, 1943) . . . 107, 223

7 & 8 Geo. 6, c. 31. (Education Act, 1944) . 1, 2, 3, 4, 5, 7, 10, 11, 12, 13, 17, 20, 21, 22, 24, 31, 33, 38, 39, 41, 47, 48, 50, 54, 56, 58, 60, 62, 65, 72, 75, 77, 80–296
s. 1 . . . 3, 8, 72, 83, 200
(1) . . 83, 84, 220, 229, 270
(2) 83, 84
(3), (4) 84
s. 2 . . . 3, 72, 85, 270
(1), (2) 85
s. 3 . . . . . 3, 86, 249
(1)–(4) 86
s. 4 . . . . . 3, 86
(1) 76, 86
(2) 86
(3), (4) 87
s. 5 . . . . . 3, 10, 87
s. 6 . 3, 73, 87, 97, 98, 100, 103, 105, 108, 110, 113, 120, 123, 128, 130, 131, 132, 134, 135, 138, 142, 145, 147, 148, 149, 151, 153, 155, 159, 161, *164, 169, 170, 171,* 174, *177, 178,* 182, 183, 184, 185, 186, 188, 190, 191, 193, 195, 197, 200, 202, 203, 204, 205, 213, 215, 216, 217, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 238, 240, 242, 245, 249, 250, 251, 252, 253, 254, 261, 264, 266, 267, 269, 271, 272, 273, 274, 277, 281, 283, 285, 287, 288
(1) . . . 11, 87, 89, 271
(2) . . . 11, 87, 90, 271
(3) . . 87, 90, 179, 233, 268, 269, 273
(4) . . 88, 90, 179, 233, 268, 269, 273
s. 7 . *3, 14, 17, 61, 90, 106,* 223, 229
s. 8 . . 3, 5, 17, 18, 95, 97, 98, 101, 105, 106, 108, 153, 155, 188, 192, 204, 216, 246, 264, 281
(1) . 21, 96, 97, 109, 135, 153, 172, 252
(a) . 94, 95, 97, 149, 216, 222, 262, 263, 281
(b) . 21, 22, 55, 95, 97, 124, 149, 172, 175, 216, 222, 262, 263, 264, 281
(2) . 6, 14, 65, 97, 98, 102, 106, 198, 246
(a) . 97, 107, 150, 153, 263
(b) 21, 43, 53, 94, 97, 98, 101, 102, 106, 148, 153, 157, 262
(c) . 19, 97, 98, 106, 152, 153, 155, 264
(d) . 22, 65, 96, 97, 98, 106, 162, 185

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 9 . **100**, 106, 110, 122, 179, 183, 204, 262, 265
(1) . 18, 24, 67, 96, **100**, 101, 110, 265
(2) . 25, 100, **101**, 106, 110, 111, 112, 116, 117, 120, 122, 124, 128, 130, 131, 132, 134, 135, 138, 139, 141, 142, 148, 149, 150, 154, 179, 184, 185, 195, 202, 203, 204, 205, 215, 218, 220, 222, 223, 228, 231, 235, 238, 244, 245, 247, 253, 261, 262, 264, 265, 269, 283, 285
(3) . 14, **100**, 119, 150, 179, 264
(4) . 19, 33, 94, 99, **100**, 106, 111, 149, 153, 157, 222, 235, 259, 262, 264
(5) . 99, **100**, 102, 106, 111, 153, 185, 193, 195, 220, 222, 235, 264, 269
(6) . . . 18, **100**, 106
s. 10 . 15, 18, 40, 98, **103**, 106, 107, 119, 120, 227
(1) **103**
(2) 5, 18, **103**
s. 11 5, 14, 93, 94, **103**, 105, 108, 110, 111, 126, 148, 169, 170, 171, 172, 188, 191, 204, 240, 247, 253, 259, 261, 285
(1) . . **103**, 105, 149, 153
(2) . . 18, 99, **104**, 109, 110
(*a*)–(*c*) **104**
(*d*) . 18, 37, 73, **104**, 106
(*e*) . 23, 65, 99, **104**, 153
(*f*) . . 22, **104**, 185
(*g*) . . . **104**, 191
(*h*) **104**
(3) . . . **104**, 106
(4) . . 99, **104**, 119, 149
(5) . . . **105**, 107
s. 12 . 6, 15, 94, 98, **107**, 110, 148, 149, 171, 188, 191, 240, 253, 261, 263, 285
(1) . . . 6, **107**, 109
(2) . . . **107**, 110, 120
(3) 107, **108**
s. 13 . 16, 39, 101, 102, **109**, 120, 204, 205, 222, 259, 264, 267, 282
(1) **109**, 117
(*a*) **109**
(*b*) . . **109**, 282, 283
(*c*) . . . **109**, 235
(2) . . **109**, 119, 244, 245
(3) **109**, 111
(4) **109**, 282
(5) 40, **109**, 283
(6)–(8) 40, **109**
s. 14 . 102, 109, **112**, 120, 138, 150, 235, 264
(1)–(5) **112**
s. 15 . 3, 25, 30, 73, 101, 102, 107, 111, 112, **113**, 120, 122, 123, 124, 134, 135, 138, 139, 141, 143, 144, 145, 146, 148, 149, 150, 151, 183, 184, 185, 195, 202, 203, 204, 215, 218, 220, 223, 228, 231, 235, 238, 243, 244, 245, 247, 253, 261, 264, 265, 269, 283, 285
(1) . . . 25, **113**, 284
(2) . 6, 25, **113**, 118, 119, 243, 246, 247, 284
(3) . 27, 31, **114**, 116, 118, 151, 285
(*a*) . **114**, 242, 243, 246, 247, 261, 284
(*b*) . . 111, **114**, 243
(4) . . 31, **114**, 118
(5) 31, **114**
(6) . . . 27, **114**
s. 16 . 116, 117, **119**, 123, 134, 150, 227, 243, 244, 246, 247
(1) . 27, 40, 102, **119**, 205, 244

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 16 (2) . . 27, **119**, 244, 245
(3) **120**
s. 17 . 15, 74, 111, 112, 118, 120, **121**, 124, 128, 129, 130, 131, 132, 133, 135, 149, 151, 203, 204, 238, 260, 265
(1) . 33, **121**, 122, 128, 129, 132
(2) . 33, **121**, 122, 123, 128, 129, 132, 151
(3) . 33, 117, **121**, 122, 151, 265
(*a*) . **121**, 122, 128, 135, 138, 203
(*b*) . 36, **121**, 122, 124, 129, 135, 138, 203
(4) . **121**, 122, 123, 129, 132, 151
(5) . 34, **121**, 122, 123, 124, 132, 151
s. 18 . 111, 112, 118, 120, 122, **127**, 131, 132, 133, 149, 151, 203, 204, 238, 260, 262, 265, 283
(1) **127**
(2) 124, **127**
(3) . 30, 34, 118, 123, **127**, 128, 144, 146
(*a*) . . 25, 28, 122, **127**
(*b*) **127**
(*c*) **128**
s. 19 . 34, 111, 112, 118, 120, 122, 124, **129**, 131, 132, 133, 135, 149, 151, 203, 204, 238, 260, 262, 265, 283
(1) 124, **129**
(2) . . . 30, **129**, 144, 146
(*a*) . . . 25, **129**
(*b*) . . . 28, **129**
s. 20 . 16, 35, 74, 76, 111, 112, 118, 120, 122, 125, 128, **130**, 132, 133, 149, 151, 203, 204, 238, 262
(1) . . . 122, 125, **130**
(2), (3) . . . **130**, 133
(4) **130**, 132
(5), (6) **131**
s. 21 . 35, 118, **132**, 149, 238, 285
(1)–(3) . . . **132**, 285
s. 22 . 16, 113, 118, 119, **133**, 231, 283
(1) . . 26, 118, **133**, 134
(2) 119, **133**
(3) . . . 118, 126, **133**
(4) . . . 26, 29, **133**, 134
(5) . . . 29, **133**, 134
s. 23 . 16, 36, 117, 118, 123, 126, **134**, 142, 162, 265
(1) **134**
(2) 123, **134**
(3) . . 98, **134**, 141, 142
s. 24 . 16, 25, 118, 123, 125, 126, 136, **143**, 204
(1) . 25, 30, 118, 125, 126, **136**, 137, 139
(2) . 28, 116, 125, 126, **136**, 137, 139, 146, 148
(*a*), (*b*) . . . **136**
(3) . . . 48, **136**, 137
s. 25 . 4, 15, 118, 135, 138, **139**, 142, 143, 145, 147, 154, 204, 223
(1) . . . 52, 75, **139**, 140
(2) . . . 52, **139**, 140
(3) . . . 135, **139**, 141
(4) . . 43, **139**, 141, 154, 215
(5) . . 52, **140**, 141, 143, 154
(*a*)–(*c*) **140**
(6) . . . 135, **140**, 145
(7) . . . 54, **140**, 141, 154
s. 26 . 15, 52, 118, 135, 138, 141, **142**, 143, 145, 154, 162, 204, 215, 223, 259, 287
(*a*), (*b*) . . . **142**
s. 27 . 118, 135, 136, 138, 142, **143**, 146, 148, 154, 204, 223, 260, 287

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 27 (1) . 26, 53, 118, 141, **143**, 215, 259
(2) . 26, 53, 117, 118, 137, 141, **143**, 146
(3) . . 25, 118, 125, 137, **143**
(4) . . 26, 118, 137, **143**, 144, 146
(5) . 26, 118, 126, 137, **143**
(6) . 25, 53, 118, 141, **143**, 146, 215, 259
s. 28 . 118, 135, 136, 138, 142, **144**, 145, 148, 154, 204, 215, 223, 260, 285, 287
(1) . 29, 30, 53, 141, **144**, 215
(2) . 29, 118, 126, 137, 139, **145**, 148
(3) . 30, 118, 138, **145**, 146, 285
(4) . 30, 118, 138, **145**, 146
s. 29 . 118, 135, 136, 138, 141, 142, 143, 144, 145, **146**, 154, 204, 223, 286
(1) . . . **146**, 259, 287
(2) 54, **146**
(3), (4) **146**
s. 30 . 54, 118, 135, 138, 141, 142, 143, 144, 145, **147**, 148, 150, 154, 204, 223
s. 31 . . 73, 94, 99, 107, **148**
(1) **148**
(2), (3) . . . 107, **148**
(4) **148**
s. 32 . 73, 107, 111, 112, 118, 119, 132, 134, 135, 138, 144, 145, 149, **150**, 157, 203, 238, 265
(1) **150**
(*a*)–(*d*) . . . **150**
(2) **150**
s. 33 . 99, 102, 103, 106, **151**, 185, 194, 195, 220, 222, 264, 269
(1) . . . 66, **151**
(2) . . . 42, 99, **151**, 155
(3) . . . **151**, 263
(4) . . . 53, 66, **151**, 162
s. 34 . 15, 66, 97, 99, 103, 106, 152, **154**, 182, 193, 206, 230, 231, 259
(1) . . 66, 152, **154**, 161
(2) . . . 152, **154**, 161
(3) **154**
(4) 152, **154**
(5) . . . 43, **154**, 161
(6) . . . 8, **154**
s. 35 . 3, 21, 74, 94, 95, 96, 102, 106, 142, 152, 153, **155**, 157, 159, 160, 162, 170, 172, 175, 193, 194, 198, 218, 220, 230, 241, 249, 250, 251, 255, 259, 265
s. 36 . 4, 41, 98, 136, 142, 152, 155, 156, **157**, 159, 164, 172, 175, 209, 230, 263, 265
s. 37 . 8, 15, 42, 142, 155, 157, **158**, 161, 163, 172, 175, 218, 230, 263, 265
(1) **158**
(2) . . . 23, 44, **158**, 219
(3) . . 22, 44, 157, **158**, 160
(4) . 22, 43, 44, 157, **159**, 160, 219, 263
(5) . . . 44, **159**, 162
(6) **159**
(7) **159**, 219
s. 38 . 7, 42, 99, 103, 142, 153, 155, 156, 157, 159, **160**, 170, 172, 175, 193, 194, 198, 218, 220, 230, 241, 249, 251, 255, 259, 265
(1) . . . 66, **160**
(2) . . . **160**, 206, 219
(3) **160**

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 39 . 42, 142, 155, 156, **161**, 163, 172, 175, 190, 219, 230, 263, 265
(1) . . . 44, **161**
(2) . . . 158, **161**, 162
(*a*), (*b*) . . . **161**, 162
(*c*) **161**
(3) . . 157, 158, **161**, 177
(4) **161**
(5) . . . **161**, 162
s. 40 . 15, 45, 46, 142, 155, 160, 162, **163**, 172, 175, 190, 231, 264, 265
(1) . . . 157, **163**
(2) . . . **163**, 168
(3)–(5) . . . **163**
s. 41 . 3, 4, 15, 55, 60, 94, 96, 97, 98, 157, **164**, 169, 170, 171, 172, 174, 177, 178, 185, 188, 204, 215, 221, 229, 261, 262, 282
(*a*) . . **164**, 168, 169, 171
(*b*) . . . **164**, 171
s. 42 . 15, 60, 94, 95, 98, 157, 168, **170**, 174, **177**, 178, 179, 188, 191, 261
(1) . . . 169, **170**
(2) . . . **170**, 178, 229
(3) . . . **170**, 171
(4) . . . **170**, 221
s. 43 . 4, 5, 15, 98, 157, 168, 169, 170, **171**, 174, 177, 178, 179, 182, 188, 191, 198, 200, 206, 215, 231, 250, 252, 259, 261, 265, 269, 293, 296
(1) . 56, 169, **171**, 172, 174, 184, 185, 196
(2) 75, **171**
(2) **171**
(4) **171**, 172
s. 44 . 4, 15, 58, 98, 157, 168, 169, 170, 171, **172**, 174, 176, 177, 178, 182, 190, 195, 196, 230, 249, 265, 268, 269, 293, 296
(1) . **172**, 176, 177, 195, 269
(2) . . . 56, **172**, 177
(3) . 169, 170, **172**, 175, 185
(*a*) **172**
(*b*) **172**, 177
(4) . . . 170, **173**, 175
(5)–(7) . . . **173**, 175
(8) . 57, **174**, 177, 182, 206
(*a*)–(*f*) **174**
(9) . . . **174**, 175, 178
(*a*)–(*c*) . . . **174**, 178
s. 45 . 4, 98, 157, 168, 169, 170, 171, 174, **176**, 178, 190, 265
(1) . . . 58, **176**
(*a*) . . 169, **176**, 178
(*b*) . . . 169, **176**
(2) **176**
(3) . . . 174, **176**, 177
(4) **176**
(5) . . . 174, 176, **177**
s. 46 . 4, 98, 157, 168, 169, 170, 171, 172, 174, **177**, 178, 190, 231, 265
(1) . . . 57, **177**
(2) **177**
(3) . . . 175, **177**
(4) **177**
s. 47 . 61, 74, 94, 98, 157, 169, 170, 171, 174, 177, **178**, 182, 183, 265
s. 48 . 4, 15, 27, 90, 107, 111, 119, 155, **179**, 193, 206, 216, 217, 240, 261
(1) . . . 64, **179**
(2) **179**
(3) . . . **180**, 261
(4) . . . 64, **180**

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*

s. 48 (5) . . . 111, 119, **180**
s. 49 . 4, 15, 27, 50, 62, 106, 107, 111, 119, **183**, 184, 217
s. 50 . 16, 106, 107, 162, 172, **184**, 186, 191, 198, 220
(1) . . . 67, 96, *175*, **184**
(2) . . . 43, 54, **184**, 185
s. 51 . 4, 16, 63, **185**, 186, 217, 259
s. 52 . 63, 106, 172, 185, **186**, 198, 220, 259
(1) 67, **186**
(a) . . . 43, **186**
(b) **186**
(2), (3) **186**
s. 53 . 15, 23, 53, 97, 103, 107, 111, 119, 169, 172, **187**, 262
(1) . . 61, 62, **187**, 188, 220
(2) **187**
(3) . . . 57, **187**, 259
(4) 187, 188
s. 54 . 15, 176, **188**, 190, 206, 207
(1) 63, **188**
(2)–(6) **189**
(7) 189, 190
(8) **190**
s. 55 . 9, 15, 43, 61, 107, 162, **190**
(1) **190**
(2) **191**
s. 56 . 16, 43, 67, 98, 99, 153, 158, 182, 183, **191**, 193, 216, 262
s. 57 . 15, 94, 152, 155, **192**, 206, 230, 231, 259
(1) 67, **192**
(2) **192**
(3) . . . **192**, 193, 206
(4) . . . 67, **192**, 193
(5) 152, **192**
(6) **192**
s. 58 . . 46, **194**, 230, 259, 265
s. 59 . 16, 46, **194**, 195, 230, 231
(1)–(4) **194**
s. 60 . . . 169, 194, **195**
(1), (2) **195**
s. 61 . 4, 21, 43, 106, **196**, 220, 240
(1) . 4, 57, 96, 127, **196**, 197, 240
(2) . 38, 57, 67, 96, 172, 186, **196**, *197*, *220*
(a), (b) . . . **196**, 198
(3) . . 57, 172, **196**, 198
s. 62 . 9, 15, 50, 98, 136, 172, 175, 179, **198**, 215, 220, 265
(1), (2) **198**
s. 63 . . . 4, 103, **200**, 259
(1) **200**
(2) **201**
s. 64 . . . . 32, **201**
s. 65 . . . . 27, 66, **202**
s. 66 . . . . . **203**
s. 67 . *9*, *37*, *122*, *123*, *127*, 164, **203**, 204, 261, 262, 282
(1) . . 31, 139, **203**, 204, 283
(2) 203, 204
(3) . . 144, 203, 204, 285
(4) 41, 204
s. 68 . *31*, *85*, *99*, *123*, *130*, *131*, 132, 134, 142, 144, 145, 147, 155, 159, 178, 186, 193, 198, **205**, 213, 238, 252, 261, 287
s. 69 . *9*, *70*, *155*, *193*, *205*, *261*
(1) . . . 65, **205**, 206
(2) . . . 176, 193, **206**
s. 70 . . 206, 261, 262, 263
(1) . . 69, **206**, 208, 211, 213
(a) **206**
(b) . . **207**, 262, 263
(2) 207, 263
(3) **207**, 263
(a), (b) **207**
(4) **207**, 208

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*

s. 71 . 20, **208**, 210, 261, 262, 264, 288
(1) . . 69, 136, 158, **208**
(a)–(d) **208**
(2) **209**
(3) . . . **209**, *210*
s. 72 . 70, 136, 208, **209**, 261, 262, 287, 288
(1) . **209**, 211, 212, 213, 288
(2) . . 209, **210**, 211, 213
(a)–(e) . . . **210**, 211
(3) . . . 209, **210**, *211*
(4) **210**
s. 73 . 136, 208, **211**, 261, 262
(1), (2) **211**
(3) . . . 208, **211**
(4) 211
s. 74 . 70, 136, 211, **212**, 216, *261*, 282
(1) . . 208, **212**, 213
(2) . . **212**, 213, 288
s. 75 . . . **212**, 261, 262
(1) . 210, 211, **212**, 288
(2), (3) **212**
s. 76 . 14, 38, 98, 135, 141, **213**
s. 77 . 38, 69, 142, 172, 175, 179, 182, 201, 208, **213**, 262, 263
(1) . . 64, **213**, 217
(2) **214**
(3) . . 16, **214**, 215
(4) . . . 208, **214**
(5) . . . 54, **214**
(6) **214**
s. 78 . . 16, **216**, 217, 261
(1) . . 64, 182, 183, **216**
(2) . 64, 107, 184, 185, 186, **216**
(a) . . 62, **216**
(b) . . 63, **216**
s. 79 . . . 15, 65, 182, **217**
s. 80 . 38, 42, 46, 156, 160, 185, 195, 217, **218**, 230, 231, 263
(1) . . . 75, **218**
(2) **218**
(3) . . 185, **218**, 263
s. 81 . 16, 18, 169, **219**, 240, 265
(a) . . . 23, 67, **219**
(b) . . . 37, **219**
(c) . . 48, 61, **219**
(d) . . . 74, **219**
s. 82 . 16, 61, **220**, 221, 240, 265
s. 83 . . . . **220**
s. 84 . 17, 61, 168, 172, 175, 177, 220, **221**
s. 85 . . 17, 102, **221**, 282
(1)–(3) **221**
s. 86 . 32, 111, 117, **222**, 223, 282
(1) **222**
(2) **222**
(a), (b) **222**
(3), (4) **222**
(5) **223**
s. 87 . 11, 221, **223**, 227, 272
(1) **223**
(2)–(5) **224**
s. 88 . *9*, *14*, *16*, *90*, *126*, *148*, **225**, 231, 266, 267, 281
s. 89 . 48, 136, **225**, 278
(1), (2) **225**
s. 90 . 17, 40, 101, 111, **226**, 266, 267, 273
(1)–(3) **226**
s. 91 . . . 16, **228**
s. 92 . . . 15, **228**
s. 93 . 7, 101, 107, 111, 112, 118, 120, **229**, 238, 248, 266, 267, 272
s. 94 . . . 218, **229**, *231*
(1) . . . 46, **229**
(2), (3) **230**

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 95 . . . . 218, **230**
(1) **230**
(2) **230**
(*a*) . . . **230**, 285
(*b*) **230**
(*c*), (*d*) **231**
s. 96 . . 73, 91, 179, **231**, 269
(1) 91, **231**, 233
(2) 91, 92, **231**
(3) 91, 93, **232**
(4) 91, 93, **232**, 233
(5) 92, **232**
s. 97 . . . . 92, 93, **233**, 269
(*a*), (*b*) **233**
s. 98 . . 92, 233, **234**, 273
(1) 73, **234**
(*a*), (*b*) **234**
(2) **234**
(3) **234**, 269
(*a*) **234**
(*b*), (*c*) **235**
s. 99 . 85, 97, 98, 103, 105, 108, 109, 123, 128, 130, 132, 134, *141*, *142*, *144*, *148*, *149*, *155*, 169, 170, 172, 188, 184, 188, 190, 197, 200, 201, 205, 213, 218, 225, 226, 229, 230, **237**, 241, 249, 251, 261, 274, 281, 287
(*1*) . 7, 31, 111, 112, *144*, *170*, 171, 174, 178, 182, **237**, 238
(2) . 34, 128, 129, 130, 151, 191, **237**, 238
(3) . . . 101, 113, **238**
s. 100 . 99, 106, **239**, 240, 242, 261, 264
(1) 90, 98, **239**
(*a*) . . . 71, **239**
(*b*) . 9, 18, 38, 67, 111, 188, 220, **239**, 240
(*c*) . 9, 18, 38, **239**, 240
(2) . 90, 182, 218, **239**, 240
(3) . . . 7, 182, **239**
(4), (5) **239**
s. 101 . 9, 76, 90, 106, 111, 239, 240, **241**, 242, 261
(1), (2) **241**
(3) **241**, 242
(4) **241**
(*a*), (*b*) . . . **241**
(*c*) . . . **241**, 242
(5) **242**
s. 102 . 3, 9, 27, 31, 116, 117, 151, 240, **242**, 243, 244, 245, 246, 247, 261, 284
s. 103 . 3, 9, 31, 113, 116, **117**, 118, 240, **243**, 244, 245, 246, 247
(1) 28, **243**
(2) . . . 28, **243**, 244, 247
(3) **243**, 247
s. 104 . 3, 9, 28, 31, 113, 117, 120, 240, 243, **244**, 245, 246, 247
(1) **244**
(2) . 117, 243, 244, **245**, 247
(*a*) . . . **245**, 247
(*b*) **245**
s. 105 . 3, 9, 28, 31, 113, 117, 118, 120, 240, 243, 244, 245, **246**
(1) **246**
(2) . 117, 243, 244, **246**, 247
(*a*)–(*d*) . . . **246**
(3) . . . 118, 238, **246**
s. 106 . 98, 106, 127, 204, **248**
(1) 23, 98, **248**
(2) **248**, 249
(*a*) **248**
(*b*) . . . 23, **248**
(3) **248**, 249
(4) 98, **248**
(5) **248**

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 107 . . . . 35, **249**
s. 108 . . **250**, 267, 279, 281
(1) . . 4, 73, 88, **250**, 272
(2) . . . 88, **250**, 272
(3) . 4, 5, 42, 56, 74, 94, 95, 96, 156, 157, 169, 172, 174, 194, **250**, 268
s. 109 . . 74, 101, 111, 117, **252**
s. 110 . 71, 90, **253**, 288, 289, 290
s. 111 . 44, 103, 106, 107, 108, 109, 118, 119, 123, 132, 134, 139, 142, 149, 159, 160, 161, 172, 174, 175, 178, 183, 190, 191, 192, 193, 200, 201, 205, 208, 211, 212, 218, 223, 225, 226, 227, 233, 238, 241, 242, 244, 245, 249, 251, **254**, 265, 267, 270, 272, 274, 281, 285, 287, 290
s. 112 . 87, 103, 111, 153, 157, 172, 177, 184, 188, 206, 208, 218, 219, 221, 230, 240, 241, 242, 249, **254**, 262, 270, 273, 282
s. 113 . 107, 109, 113, 119, 132, 155, 159, 175, 183, 190, 193, 195, 196, 206, 209, 210, 215, **254**, 283
s. 114 . 18, 56, 227, **255**, 258, 266, 267, 287
(1) . 3, 4, 19, 21, 25, 26, 27, 30, 34, 41, 63, 64, 69, 88, 90, 92, 94, 95, 96, 97, 98, 101, 102, 103, 106, 107, 108, 109, 111, 113, 117, 118, 119, 120, **123**, 128, 129, 130, 131, 133, 134, 135, 141, 142, 143, 144, 145, 146, 147, 149, 151, **152**, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 169, 170, 171, 172, 175, 177, 178, 179, 182, 183, 184, 185, 186, 188, 190, 191, 192, 193, 194, 195, 197, 198, 200, 201, 202, 204, 205, 206, 208, 209, 211, 212, 213, 215, 216, 217, 218, 219, 220, 221, 222, 223, 227, 230, 231, 233, 234, 235, 238, 240, *241*, 242, 243, 244, 245, 246, 247, 249, 251, 252, 253, **255**, 258, 266, 267, 269, 273, 275, 281, 282, 283, 284, 285, 287, 290
(2) . 101, 103, 106, 108, 113, *119*, 120, *131*, *151*, *153*, 169, 171, 184, 188, 190, 197, 200, 202, 215, 217, 221, 227, 235, 238, 242, 244, 245, 249, **257**, 261, 264, 283, 287
(*a*) . . . 18, **257**
(*b*) . *6*, *18*, *37*, *107*, **257**
(3) . 33, 74, 99, 101, 106, 108, 109, 149, 179, 246, **258**, 262, 263, 264
(4) . 147, 195, 215, **258**, 259
(5) . 42, 98, 99, 157, 160, 163, *175*, 182, 185, 192, 193, *194*, 198, 217, 218, 220, 230, 231, 241, 249, **258**, 259, 261, 264, 265, 269
(6) . 74, 119, 157, 218, 220, **258**, 259
(7) . . 98, *101*, **258**, 285
(8) . . 86, 179, 242, **258**
s. 115 . . 174, **175**, **265**, 266
s. 116 . . 57, 174, 175, **266**
s. 117 . . 11, 90, 97, 98, 100, 103, 105, 108, 113, 119, 120, 122, 123, 128, 130, 131, 132, 134, 135, 138, 142, 145, 147, 149, 151, 153, 155, 159, 161, 164,

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
s. 117 (*con.*) 169, 170, 171, 174, 177, 178, 182, 184, 185, 186, 188, 190, 191, 193, 195, 200, 202, 203, 204, 205, 213, 215, 216, 217, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234, 235, 238, 240, 243, 244, 245, 247, 249, 251, 252, 253, 254, 261, 264, **266**, 267, 269, 274, 283, 285, 287, 288
(1) 262, **266**
(2), (3) **266**
(4) . . 228, 260, **266**, 267
(*a*) **267**
(*b*) 12, **267**
(5) . . **267**, 272, 273, 281
s. 118 . 90, 97, 98, 100, 103, 105, 108, 113, 119, 120, 123, 128, 130, 131, 132, 134, 135, 138, 142, 145, 147, 149, 151, 153, 155, 159, 161, 164, 169, 170, 171, 174, 177, 178, 182, 184, 185, 186, 188, 190, 191, 193, 195, 200, 202, 203, 204, 205, 213, 215, 216, 217, 218, 219, 220, 221, 224, 225, 226, 228, 229, 230, 231, 233, 234, 235, 238, 240, 243, 244, 245, 247, 249, 251, 252, 253, 254, 260, 261, 264, 266, **267**, 269, 272, 274, 281, 283, 285, 287, 288
s. 119 . 4, 5, 69, 84, 91, 102, 105, 149, 157, 171, 179, 203, 207, 208, 220, 222, 224, 249, 251, 252, 253, **267**, 269, 270, 271, 281, 285, 290, 293
s. 120 .58, 227, **268**, 269, 270, 291, 293
(1) **268**
(*a*)–(*c*) . . . **268**
(*d*) . . . 90, **268**
(2) **268**
(3) **268**, 269
(4) 90, 91, **268**
(*a*) **268**
(*b*) **269**
(5) **269**
s. 121 . 8, 58, 72, 84, 85, 188, 227, 242, 254, 262, 265, 269, **270**, 294, 296
(*a*) . . 230, 242, **270**, 274
(*b*) **270**
s. 122 . . . . . **271**
(1) **271**
(2) . . . 269, 270, **271**
Sched. I . 73, 88, 97, 98, 100, 103, 105, 108, 113, 119, 120, 123, 124, 128, 130, 131, 132, 134, 135, 138, 142, 145, 148, 151, 153, 155, 159, 161, 164, 169, 170, 171, 174, 177, 182, 184, 185, 186, 188, 190, 191, 193, 195, 197, 200, 202, 203, 204, 205, 213, 215, 216, 217, 218, 219, 220, 221, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 238, 240, 242, 245, 249, 251, 252, 253, 254, 261, 264, 266, 267, 269, **271**, 274, 283, 285, 287, 288
Pt. I . 11, 89, 90, 92, 250, 251, **271**, 272, 273, 274, 277, 281
para. 1 . . . 91, 251, **271**
2 . . . . . **271**
3 . . . . . **271**
(*a*)–(*c*) . . . **271**
(*d*) **272**
4 . . . . . **272**
5 . . . . 91, **272**
Pt. II . 12, 90, 130, 250, 251, 271, **273**, 274

PAGE

7 & 8 Geo. 6, c. 31. (Education Act, 1944)—*continued*
Sched. I., Pt. II—*continued*
para. 1 . . . 251, **273**, 274
2 . . . . **273**, 247
3 . . . . . **273**
4 . . . . 90, **273**
5, 6 . . . **273**, 274
7, 8 . . . **273**, 275
9 . . . . **274**, 275
10 . . . . . **274**
(*a*), (*b*) . . **274**, 275
11 . . . . . **274**
Pt. III . 11, 12, 90, 250, 251, 271, **275**, 277
para. 1 . . . . . **275**
2 . . . **275**, 279, 281
3 . . . . . **275**
4 . . . **275**, 278, 281
(*a*), (*b*) . . 251, **276**
5–7 . . . . . **276**
8 . . . . **276**, 281
(*a*)–(*e*) . . . **276**
(*f*) . . . **276**, 282
(*g*), (*h*) . . . **276**
9 . . . . . **276**
10 . . . . **276**, 281
11 . . . . **277**, 281
12, 13 . . . . **277**
Sched. II . . 40, 109, 111, **282**
para. 1–7 . . . . **282**
8 . . . . **282**, 283
Sched. III . 30, 118, 146, 151, 243, 247, 264, 265, **283**, 284
para. 1–3 . . . . **283**
4 . . . . 247, **283**
5 . . . . 247, **284**
6 . . . . . **284**
7 . . . 30, 146, **284**
8–10 . . . . **284**
11 . . . . **284**, 285
(*a*), (*b*) . . . **284**
Sched. IV . 35, 122, 132, 133, **285**
para. 1–6 . . . . **285**
Sched. V . 76, 141, 146, 147, 156, 215, 255, 259, **286**
para. 1 . . . . **286**
2 . . . 259, **286**
(*a*) **286**
(*b*) . . . 76, **286**
(*c*), (*d*) . . . **286**
3–8 . . . . **286**
9 . . . 259, **286**
10 . . . **286**, 287
11 . . . 259, **286**, 287
(*a*)–(*c*) . . . **286**
12 . . . 259, **286**
Sched. VI . 70, 208, 209, 210, 212, **287**
para. 1 . . . . **287**
(*a*), (*b*) . . . **287**
2 . . . . **287**
3, 4 . . . . **288**
Sched. VII . 52, 90, 253, 288, 289
Pt. I . . 253, 254, **288**
para. 1 . . . . **288**
2 . . . . **288**
(*a*), (*b*) . . . **288**
3–5 . . . . **288**
Pt. II . . 253, 254, **288**
para. 1, 2 . . . . **288**
3, 4 . . . . **289**
5 . . . . **289**
(*a*), (*b*) . . . **289**
Sched. VIII . 58, 227, 268, 269, **291**, 293
Pt. I . . 45, 46, 268, **291**, 293
Pt. II . . 58, 268, 293
Sched. IX . 58, 188, 227, 242, 269, 270, **294**
Pt. I . . 188, **294**, 296
Pt. II . . . 58, **296**

INTRODUCTION

1. THE EDUCATIONAL SYSTEM BEFORE THE ACT

The Education Act, 1944, is a courageous and ingenious attempt to create a single national system where previously there has been a variety of services, each, with its own aims and methods, attempting to cover different parts of the educational field.

First there were the endowed grammar schools, with origins far back in history, the result of the interest in education of monasteries and cathedrals, city companies and wealthy patrons. During the nineteenth century some of them, guided by such headmasters as Arnold and Thring, achieved reputations which attracted pupils from all over the country. They became famous Public Boarding Schools, retaining their independence both of public finance and public control, by the size of their endowments and the wealth of the parents of their pupils. Some, less famous, served their localities by holding before their pupils the ideals of scholarship and Christian conduct. Others were of profit only to their schoolmasters, or, more frequently, not even to them. Until 1902, however, these schools, good and bad, were the only means by which a child could receive the benefit of a secondary education. In that year, the Councils of counties and of county boroughs were given the power to supply or aid the supply of higher education. The growing needs of the professions and of commerce created a demand for a secondary school to be available in every area and the new authorities for higher education tackled their job in most cases with enthusiasm. They gave assistance to endowed grammar schools in need, or, with the consent of their governors, took them over entirely. In areas where there were no secondary schools or not enough to supply the demand, they established and maintained new ones, so that in little more than twenty years there were few towns of any size without a secondary school. The country districts, however, are still in many cases less well served, though modern road transport has enabled many children to attend a school in a town some miles away. [1]

The education given in secondary schools was not intended to prepare children for any specific occupation. Vocational education was provided in Technical Colleges and Schools, especially since the Technical Instruction Act of 1889. In these Schools and Colleges a variety of full-time and part-time courses relating to the needs of industry and commerce are attended by pupils mainly over sixteen years of age. In some few areas Junior Technical Schools prepare children, usually between the ages of thirteen and fifteen or sixteen, for a particular industry or a group of related industries. The Consultative Committee, in their report on Secondary Schools, recommended in 1938 that the age of admission to these schools should be lowered to eleven years, and that many more of them should be established to offer a more practical form of secondary education than that offered in the Grammar School. The outbreak of war prevented the full consideration and adoption of these recommendations. [2]

Early in the nineteenth century the education of the "labouring poor" excited the concern of many religious and philanthropic bodies and individuals, who saw the dangers of a degraded population engulfed by the rising tide of the industrial revolution. Two societies especially, the National Society and the British and Foreign Schools Society, raised subscriptions for the establishment of schools in which, for a small fee, elementary instruction could be given with some teaching of the Christian faith. The income from voluntary subscriptions and school fees quickly proved insufficient for the enormous task they had undertaken, and in 1833 the State came to their aid with an annual grant. To administer this grant a Committee of the Privy Council was set up with power to inspect the schools that were assisted. Even so, by 1870 there was only one place for every three to five children.

The Elementary Education Act of that year, therefore, required School Boards to be established to provide schools wherever they were needed, the necessary funds to be raised by a rate. Attendance at school for every child was made obligatory in 1880. In 1891 the payment of fees was prohibited in all schools charging less than 10s. 0d. a year, but fees were not finally abolished until 1918. As from the 1st January, 1894, the age of exemption from school attendance was raised to eleven years. In 1899 the Education Department, which since 1856 had taken over the administration of grants, was abolished and the Board of Education created to superintend matters relating to education. In 1902 the Councils of counties, county boroughs and of certain boroughs and urban districts took over the duties of the 2,568 School Boards; the Board Schools became Council Schools and the new authorities became responsible also for the maintenance of the voluntary schools, and for the efficiency of the secular instruction given in them. They could not, however, make any contribution towards the cost of improving the voluntary school buildings or towards the establishment of new ones. Such expenditure still had to be met by voluntary subscriptions. The Act of 1902 was the basis of the law of education until the Education Act, 1944, but the Education Act, 1918 (re-enacted in the consolidating Act of 1921) raised the age of compulsory school attendance to fourteen without exemption and required provision to be made for practical and advanced instruction in elementary schools. Thus the elementary system began to overlap and run parallel with the secondary system, and the Consultative Committee of the Board of Education recommended in 1926 the universal adoption of the experiment, tried out in some areas, of reorganising the elementary schools into primary schools for children under eleven and senior or "modern" schools for children over that age. They envisaged the senior schools, when the school leaving age had been raised to fifteen, as offering a genuine form of secondary education for all children, alternative to that provided in the grammar schools. Though this policy was adopted officially by the Board of Education, the administrative difficulties, especially in rural areas were great. It was not possible to give assistance from rates or taxes to the managers of voluntary schools for the erection of new buildings or for the improvement of old ones, though this was essential if secondary education was to be given in them. Nor could the Local Education Authorities who built new senior schools themselves require the attendance of children over the age of eleven from voluntary schools if the managers refused to limit their schools to infant and junior children. Until a solution to this problem was found all attempts to raise the school leaving age to fifteen were frustrated. Even the provisions of the Education Act, 1936, by which contributions up to 75 per cent. of the cost of new voluntary senior schools would be given by the Local Education Authorities in return for increased control over the appointment of teachers, were not as successful as had been hoped, and the proposed raising of the school leaving age to fifteen on the 1st September, 1939, was rendered illusory by the granting of exemptions to children who were "beneficially" employed. [3]

In spite, however, of all the limitations caused by the law and by financial difficulties, the "silent social revolution" effected so far by the statutory educational system, can be seen in many ways, but perhaps nowhere more strikingly than in the welcome given to the Education Act, 1944, which, more than any other Education Act, has been demanded by the people rather than imposed upon them. [4]

2. OUTLINE OF NEW SYSTEM, INDICATING THE MAIN CHANGES MADE BY THE EDUCATION ACT, 1944

The Principal Changes.—Under the system briefly described above the Board of Education was charged merely with the superintendence of matters relating to education in England and Wales; there were Local

Education Authorities charged with the duty of ensuring compulsory elementary education, some of whom had also the power to supply or aid the supply of higher education. The general school leaving age was fourteen, and the only obligation imposed on parents was to cause their children to receive efficient elementary instruction in reading, writing and arithmetic, either by attendance at school or otherwise. In practice, however, since the report of the Consultative Committee on the Education of the Adolescent in 1926, in the areas where reorganised senior schools had been established, much more than elementary instruction had been provided, and a type of secondary education alternative to that given in the Grammar or Junior Technical Schools was available in schools officially described as " elementary ". [5]

The Education Act, 1944, gives statutory recognition to this tendency and the greater part of the Act is concerned with the solution of difficulties which have hitherto prevented its universal adoption, or with devices to ensure the speedy completion of the process. Of the following main legislative changes the first eight are directed to this end :

(i) The Board of Education becomes a Ministry and the Minister is charged with the duty of promoting the education of the people of England and Wales, and of securing the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service. To advise him he will have two Central Advisory Committees, one for England and one for Wales, who will not only report on matters referred to them by the Minister as did the old Consultative Committee, but will be able to report on any matters connected with educational theory and practice as they themselves think fit (a).

(ii) The powers of Local Education Authorities to provide facilities for secondary, technical and adult education have been converted into duties (b).

(iii) In place of two parallel types of education, elementary and secondary, education is to be organised in three successive stages to be known as primary, for children up to twelve years of age, secondary, for children up to between fifteen and nineteen years of age, and further education for persons over the compulsory school age (c). Thus all schools providing education for children over twelve years of age will be administered under the same code of regulations. This new conception has involved the following changes :—

(iv) In place of the previous system by which there might be two authorities for education in the same area, one responsible for elementary and the other for higher education, there is to be one authority only for each area, the county or county borough council, who will be responsible for all forms of education (d)

(v) The compulsory school age is raised to fifteen and as soon as practicable it will be raised to sixteen (e), in order that all secondary schools may provide a main course of approximately equal length.

(vi) In order that all school buildings may be of comparable standard the managers of non-provided schools, who have hitherto themselves had to finance the alteration and improvement of their school premises, are to be given assistance in various ways (f) from public funds to enable them to do this.

(a) Education Act, 1944, ss. 1–5. In the remainder of this Introduction where a reference is given to a section of an Act without specifying the Act the reference is to the Education Act, 1944.

(b) Ss. 8 and 41.

(c) Ss. 7, 8 and 114 (1).

(d) S. 6.

(e) S. 35.

(f) Ss. 15, 102–105.

(vii) The duty imposed on parents is to cause every child of compulsory school age to receive efficient full-time education suitable to his age, ability and aptitude either by regular attendance at school or otherwise (g).

(viii) No fees are to be charged in respect of admission to any school maintained by a Local Education Authority (h).

(ix) Religious instruction is now obligatory in all schools maintained by a Local Education Authority, and the school day in all such schools must begin with collective worship, unless this is impracticable (i).

(x) Free part-time education in county colleges will be compulsory for the equivalent of one day a week during working hours for young persons up to the age of eighteen (j).

(xi) A system of inspection and registration of all independent schools which cater for children of compulsory school age is introduced, and powers are conferred on the Minister to deal suitably with unsatisfactory schools (k).

(xii) All medical treatment, other than domiciliary treatment, is to be free, and footwear and clothing may be provided by education authorities subject to repayment by the parents according to their means (l).

Apart from these legislative changes, the Government announced in the White Paper of July, 1943 (m) their intention by administrative action to effect a progressive reduction in the size of classes and to abolish the present examinations for Special Places at Grammar Schools. [6]

The dates from which the changes will operate.—Not all the provisions of the Act can come into operation at once. The time-table by which it will be progressively brought into force is as follows (n) :

(i) Part I of the Act which deals with the central administration and Part V of the Act which contains certain supplemental provisions, came into force on the Act receiving Royal Assent on August 3rd, 1944.

(ii) Part II (which is the main part of the Act dealing with the whole statutory system of education, primary, secondary and further), together with Part IV (which contains the miscellaneous, administrative and financial provisions) will come into force on April 1st, 1945. From this date the new Local Education Authorities are constituted, but in order to facilitate the coming into operation of Part II and to prevent difficulties in its operation, the Minister may authorise or require any Local Education Authority before that date to exercise any functions which will become exercisable by that Authority under Part II of the Act when it comes into force (o). In other words, in order to hasten the operation of the reforms in the Act, a county or county borough council which is already a Local Education Authority under the existing system, or any former authority, may be required or authorised at once to begin the preparatory work of drawing up development plans, setting up local committees, etc. On the other hand, it may not be possible to provide an adequate supply of teachers or sufficient school accommodation for the school leaving age to be raised to fifteen on April 1st, 1945. The Minister therefore has power by order to postpone this until April 1st, 1947 (p). The duty of the Local Education Authority to establish and maintain county colleges

(g) S. 36.
(h) S. 61.
(i) S. 25.
(j) Ss. 41, 43–46 and 61.
(k) See Part III of the Education Act, 1944.
(l) Ss. 48, 49, 51 and 114 (1).
(m) Cmd. 6458.
(n) S. 119.
(o) S. 108 (1).
(p) S. 108 (3).

comes into operation on a date not later than three years after April 1st, 1945 (q), or after the date of expiry of an order postponing the raising of the school leaving age to fifteen (r).

(iii) Part III of the Act which deals with independent schools, is to come into operation on such date after April 1st, 1945, as His Majesty by Order in Council may appoint (s). [7]

Development Plans.—By section 8 of the Education Act, 1944, the new Local Education Authorities are charged with the duty of securing for their area sufficient schools for primary education and for secondary education, in place of the previous duty to provide elementary education and power to provide secondary education. Approximately half the existing elementary and secondary schools maintained by the education authorities were not provided by them. The first step, therefore, to be taken under the Act is to define which of the existing schools are to be classified as primary or secondary and which are to be classified as county schools (provided) or voluntary (non-provided). The Act requires each Local Education Authority (t) after Part II of the Act comes into force to estimate the immediate and prospective needs of their areas in the light of the changes effected by the Act and of any regulations made thereunder, taking into consideration all the schools in their area whether provided by them or not, including independent schools, and to decide which maintained schools they propose should provide primary education, which should provide secondary education and which should continue for the time being to provide both primary and secondary education. This may involve alterations to existing schools (tt), the provision of new county or voluntary schools, and arrangements with schools not maintained by the authority. They must also consider what provision they propose should be made to meet the needs of children under five and of pupils who require special educational treatment, what arrangements should be made for the transport of pupils to and from school and what boarding schools should be provided. All such proposals must be included in a Development Plan, in the form to be laid down by the Minister, and submitted to him by the 1st April, 1946, or within such extended period as he may in any particular case allow. During the debate on the Committee stage of the Bill the Minister made it clear, however, that it was the intention of the Government that the Development Plans should definitely be prepared and submitted within the period of twelve months allowed from the date when Part II of the Act came into force. Before submitting the Development Plan to the Minister the Authority must consult the managers or governors (or persons representing them) of all schools other than county schools, whether within or without the area of the authority, which would in the opinion of the authority be affected by the execution of the Plan. The Local Education Authority, after it has submitted its Plan to the Minister, must forthwith furnish to the managers or governors of every school which it thinks would be affected by the execution of the Plan, such particulars of the Plan as are sufficient to show in what way the school would be affected by its execution. When a Plan has been submitted to him, the Minister may direct that particulars of it should be furnished to anyone who, in his opinion, has not received sufficient information about it but who would be affected by it. The schools most likely to be affected by the Plan are the voluntary schools, which may be classified as primary schools though the managers may prefer them to be secondary schools, or vice versa. The managers of such schools may also claim that the alterations required in their buildings by the proposals

(q) S. 43. (r) S. 108 (3). (s) S. 119. (t) S. 11.

(tt) Regulations made by the Minister will prescribe the standards to which the premises of schools maintained by a Local Education Authority must conform, but if the Minister is satisfied, as regards any particular school, that in view of the nature of the site or other special circumstances affecting the school premises, that it would be unreasonable in that case to require conformity with the regulations, he may make a special direction as regards that school; s. 10 (2), proviso.

in the Plan are unnecessarily expensive, or they may have hoped for more generous facilities for the transport of pupils to and from their schools. [8]

The Act allows such managers or governors, or any other person affected by the Plan, within two months from the date on which the Minister is satisfied that they have received sufficient particulars, to make any objections to him. When he has considered such objections, he may, after consulting the Local Education Authority, make any modifications he thinks necessary or expedient for the purpose of securing that the Plan makes proper provision for the immediate and prospective needs of the area with respect to primary and secondary schools. The Minister must then approve the Plan, and give such directions to the Authority as he considers desirable for the purpose of giving the managers and governors of every voluntary school affected by the plan notice that it has been approved. This point is of importance as the managers or governors of such schools will be allowed six months from the date on which they receive notice of the Minister's approval of the Plan to make application to the Minister for an order directing that the school should be an aided school or a special agreement school, and failing such an application within the specified time the school will become a controlled school (u) and the managers or governors will lose many of their rights and duties (v). [9]

In addition to giving a direction to the authority to give notice of the approval of the Development Plan to the managers or governors of voluntary schools, the Minister may also direct them to give publicity to the plan as approved by him. It is important that such publicity should be given, in order that the managers, governors or proprietors of schools not maintained by a Local Education Authority should be informed of the proposals in the Plan. The parents of children in the area of the authority and the general public should also, of course, be given the opportunity of studying its provisions. [10]

Local Education Orders.—The mere fact that a Development Plan has been approved does not affect the duties of the Education Authority, but in so far as the Minister considers it desirable to impose duties on the authority for the purpose of putting the Plan into force, he will impose such duties by what is to be known as a Local Education Order (w). This is an order which the Minister is to make in respect of the area of each Local Education Authority as soon as may be after he has approved the Development Plan for that area. The order will specify the county schools and the voluntary schools which it will be the duty of the authority to maintain, and will define the duties of the authority with respect to the measures to be taken for securing that there shall be sufficient primary and secondary schools available for their area. It will also provide as to which of the schools, whether maintained or assisted (x) by the authority, shall be primary schools and secondary schools respectively, and which of them, if any, shall for the time being be organised for the provision of both primary and secondary education (y). [11]

The Minister may amend the Local Education Order at any time, if in his opinion it is expedient owing to any change or proposed change of circumstances, but before doing so in such a way as to vary the duties of a Local Education Authority in any way not already provided in the Development Plan, or by proposals approved by him or caused by the discontinuance

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(u) For an explanation of these terms see *post*, pp. 24–25.

(v) See s. 15 (2).

(w) S. 12.

(x) A school is " assisted " if the authority make a grant to the governors in consideration of any educational facilities provided. See s. 114 (2) (*b*) and *post*, p. 34.

(y) S. 12 (1). Under the provisions of s. 8 (2) of the Act, all Local Education Authorities are directed to have regard to the need for securing that primary and secondary education is provided in separate schools, although it is recognised that this is not a step that can be taken all at once in all parts of the country.

of a voluntary school, he must give notice of the proposed amendment to the Local Education Authority and to the managers or governors of any school which may be affected by the amendment, and he must consider any objections made to him within two months after the service of such notice. [12]

If a Local Education Authority inform the Minister that they are aggrieved by an order, or by an amendment of an order, the order or the amendment must be laid before Parliament as soon as may be thereafter, and if either House resolves within forty days that the order or amendment be annulled it ceases to have effect. [13]

It may be convenient here to call attention to the provision in the Act designed to enable the Minister to deal with the situation which would arise in the event of any default by either a Local Education Authority or the managers or governors of schools in carrying out the duties imposed on them by the Act. If the Minister is satisfied, either upon complaint by any person or otherwise, that any Local Education Authority or the managers or governors of a county or voluntary school have failed to discharge any duty imposed by the Act, he may make an order declaring them to be in default, and give such directions as may be necessary to enforce the execution of that duty, and such directions are enforceable on an application made on behalf of the Minister, by mandamus (z). A similar clause was included in the Education Act, 1921 (za), but the Board of Education could only issue an order after holding a public inquiry (zb). The clause was, in fact, of little effect as so many of the powers of a Local Education Authority were permissive and not obligatory. In so far as the Board of Education enforced on Local Education Authorities the execution of their duties they did so by deductions from the grants made to the authorities by the Board (zc). This power is continued in the Education Act, 1944, which provides that the Minister may make regulations whereby the payments made by him are dependent upon the fulfilment of such conditions as may be determined (zd). It is possible, however, that in view of the increased duties and responsibilities now given to the Minister, he may make more use of the power of enforcing a duty by mandamus. A Local Education Authority may not be able to avoid a direction of the Minister if they act unreasonably, even in those matters which the Act normally leaves to their discretion, for if, as a result of a complaint by anyone, the Minister is satisfied that they have acted or are proposing to act unreasonably in the exercise of their powers or duties, he may give such directions as he thinks expedient, even though the Act made the exercise of the power or duty contingent on the opinion of the authority (ze). [14]

3. THE NEW STATUTORY SYSTEM OF EDUCATION

(1) EDUCATION AUTHORITIES

(*a*) CENTRAL ADMINISTRATION

Reconstitution of Ministry of Education.—By the Board of Education Act, 1899 (a) a Board of Education was established charged with the superintendence of matters relating to education in England and Wales. This Board was to consist of a President, the Lord President of the Council, His Majesty's Principal Secretaries of State, the First Lord of the Treasury and the Chancellor of the Exchequer. In fact, the Board never met at all and its duties were discharged solely by the President. It took the place of the former Education Department (including the Department of Science and

(z) S. 99 (1).
(za) Education Act, 1921, s. 150; 7 Halsbury's Statutes 205.
(zb) The Minister may still hold an enquiry if he wishes; Education Act, 1944, s. 93.
(zc) See Education Act, 1921, s. 118 (4); 7 Halsbury's Statutes 194.
(zd) S. 100 (3).
(ze) S. 38.
(a) 7 Halsbury's Statutes 124.

Art), which was an off shoot of the Privy Council. It will be observed that the Board's duties were limited to the superintendence of matters relating to education, and this limitation was continued by s. 1 of the Education Act, 1921 (b). The Education Act, 1944, repeals the whole of the Board of Education Act, 1899 (c) as from the date declared by Order in Council to be the date on which the first appointment under the 1944 Act of a Minister took effect. The first section of the Act authorises the appointment of a Minister, and the department of which he is in charge is to be known as the Ministry of Education. Thus the old Board is now abolished. The change from a President to a Minister is intended to symbolise a change of status in the political Head of the Department, it being thought that this would give him additional prestige in relation to his colleagues. Whether this will be so or not, will depend more on the way the office is treated by different governments in the future. Too frequent changes in its occupants, who have not always been renowned for their interest in education, but have tended rather to regard the post as a step towards more important appointments in the cabinet, have in the past prevented the office from securing the prestige which it should rightly have. The functions now to be exercised by the Minister, greatly increased as they are in power and responsibility, will perhaps be more effective in adding to his status. His duty is no longer merely to superintend matters relating to education, but to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area. Formerly the power of initiative in educational matters rested almost entirely with the Local Education Authorities. The President of the Board of Education could theoretically do little more than prescribe minimum standards, and enforce these standards by means of the grant regulations. He could not require any authority to progress faster than the most backward of them, though frequently through the Inspectors and by means of circulars, he would encourage them to greater efforts. Now, however, his powers, as will be seen in more detail in the later parts of this Introduction, are considerable. He can direct an unwilling and recalcitrant authority to make almost any improvement in their provision that he may wish, and there is little of importance that an authority can do without his approval. By Local Education Orders he can define their duties with respect to the measures to be taken for securing that there shall be sufficient primary and secondary schools available for their area. No authority is empowered or required to secure the provision of facilities for further education otherwise than in accordance with schemes which have been approved by the Minister. Yet, as is stated in the Explanatory Memorandum issued with the text of the Education Bill in 1943 (d) the change " will not involve any diminution in the responsibility of Local Education Authorities, to whom wider opportunities will be afforded than ever before. What is involved is a recognition of the principle that the public system of education, though administered locally, is the nation's concern, the full benefits of which should be equally available to all alike, wherever their homes may be ". [15]

It may be of interest to mention a few of the ways in which the Minister has been given new powers which may be in conflict with, or complementary to, the powers of the Local Education Authorities.

1. He may cancel a certificate, issued by a medical officer of an authority, showing whether or not a child is suffering from such disability as to require special educational treatment (e).
2. He may decide to which school a particular child may go in case of a dispute between the authority and the parent (f).

(b) 7 Halsbury's Statutes 130.
(c) Education Act, 1944, s. 121.
(d) Cmd. 6492.
(e) Education Act, 1944, s. 34 (6).
(f) S. 37.

3. He may direct an authority to provide transport for the purpose of facilitating the attendance of pupils at schools or classes (g).
4. He may give directions to an authority requiring them to establish, maintain or assist any training college (h).
5. He may determine any dispute between a Local Education Authority and the managers or governors of a school, save as otherwise expressly provided by the Act even though the Act has allowed them discretion in the matter (i).
6. He may himself require a parent to submit a child for medical examination (j).
7. He may prohibit the appointment of an applicant for the post of chief education officer to an authority (k).
8. He has powers to deal with any independent schools which are unsuitable in various ways (l).
9. He has power to give grants to bodies other than Local Education Authorities, for the purpose of educational services provided by them or for the purpose of educational research (m).
10. He may himself pay the fees and expenses of individual pupils attending schools at which fees are payable, and may pay sums by way of scholarships and other allowances for pupils over compulsory school age (n).
11. He may pay half the cost of repairs and alterations of aided schools and special agreement schools and may make loans to the managers or governors of such schools (o).
12. He has powers in regard to the special financial provisions relating to Wales and Monmouthshire (oo). [16]

There have been many arguments brought forward in favour of the Minister having control of other educational institutions for which at present other Government Departments are responsible such as the approved schools, and schools for Poor Law children. These schools, however, still continue to be the responsibility of the Home Office and of the Ministry of Health respectively. In the case of Agricultural Education, which has hitherto been administered by the Ministry of Agriculture, it has been announced in the House of Commons that in view of the importance of integrating agricultural education with the general educational structure, the provision of agricultural education at the farm institute level and below should be a function of the Local Education Authority on a mandatory and not a permissive basis. It would continue to be grant-aided through the Ministry of Agriculture, but a permanent Joint Advisory Committee would be set up by the Ministries of Agriculture and Education to advise on general educational policy and methods of training at Farm Institutes (p). Two Committees have now been appointed under the chairmanship of Dr. Thomas Loveday. [17]

Mention should also be made of another development during the war, which may have important repercussions in the future, namely the setting up of the Council for the Encouragement of Music and the Arts which administers funds provided by the Treasury to encourage the appreciation of drama, music and art among the general public. This Council is housed at the offices of the Ministry of Education and the Minister answers for it to Parliament. While adopting novel methods, it is the nearest approach in this country to a Ministry of Fine Arts. [18]

(g) S. 55.
(h) S. 62.
(i) S. 67.
(j) S. 69.
(k) S. 88.
(l) Part III.
(m) S. 100 (1) (b).
(n) S. 100 (1) (c).
(o) Ss. 102–105.
(oo) S. 101.

(p) Speech by Minister of Agriculture in House of Commons, January 20, 1944. See now the Agriculture (Miscellaneous Provisions) Act, 1944, which adopts in part the proposals of the Luxmore Committee on Post-War Agricultural Education as to the establishment of a National Agricultural Advisory Service. See Cmd. 6433 and the Explanatory Memorandum printed with the Agriculture (Miscellaneous Provisions) Bill, 1944.

The Central Advisory Councils for Education.—The Board of Education Act, 1899 established a Consultative Committee (q) whose function was to advise the Board of Education on any matter referred to the Committee by the Board. This Committee was continued in existence by the Education Act, 1921 (r) and has produced many reports, such as that on the "Education of the Adolescent", which have had a wide influence on educational practice. A serious defect, however, in its terms of reference was the fact that it could not initiate an enquiry of its own volition. As has been well said, it could not speak until it had first been spoken to. The repeal of the Act of 1899 has caused the Consultative Committee to cease to exist. In its place have been created two Central Advisory Councils for Education, one for England and the other for Wales and Monmouthshire. These Councils have the duty of advising the Minister upon such matters connected with educational theory and practice as they think fit, and upon any questions referred to them by him. The members of each council are appointed by the Minister, who will also appoint the Chairman, and an officer of the Ministry of Education to be the secretary. Regulations made by the Minister will make provision as to the term of office of members, periodical meetings and as to procedure. Each council is to include persons who have had experience of the statutory system of public education as well as persons who have had experience of educational institutions not forming part of that system (s). During the debate on the Committee Stage of the Education Bill (t) it was stated on behalf of the Government that the membership of the Councils would include people who would be capable of speaking with authority on Technical Education and representatives of industry and rural affairs. What was looked for were representatives of culture in its broadest sense rather than in an academic sense. The councils would not be able to consider questions of educational administration, but would advise the Minister on the content of education, "the theory of what can be taught and the practice of what can be taught". Such subjects as the possible types of secondary education, the use of films in schools and rural and art education were mentioned for its consideration. [19]

Annual Report to Parliament.—An annual report by the Board of Education has been required since 1870 (u), and s. 168 of the Education Act, 1921, required an annual report of their proceedings. This included a short general review of educational activity and a large number of statistics of great value. The Education Act, 1944, obliges the Minister to make an annual report to Parliament giving an account of the exercise and performance of the powers and duties conferred and imposed upon him by the Act and of the composition and proceedings of the Central Advisory Councils for Education (v). This report should be an even more valuable record of educational progress, as it seems likely to be a more detailed summary of educational activities throughout the country, and an undertaking has been given that the report will contain information as to the progress of re-organisation and as to the number of teachers who will be available for carrying out the raising of the school leaving age to sixteen (w). It is necessary that a report of the proceedings of the Central Advisory Councils should be made as it is expected that they will not only issue public reports, but will also give advice to the Minister which may not be published at the time. [20]

(b) THE NEW LOCAL EDUCATION AUTHORITIES

Apart from the powers mentioned above, the main function of the Central Authority under the Act, is to secure the effective execution by Local

(q) S. 4; 7 Halsbury's Statutes 124.
(r) S. 2; 7 Halsbury's Statutes 131.
(s) The Consultative Committee was required to have not less than two-thirds of its members qualified to represent the views of Universities.
(t) 396 H. of C. Official Report 1805–8.
(u) Elementary Education Act, 1870, s. 100.
(v) S. 5.
(w) 398 H. of C. Official Report 747.

Authorities of the national policy for providing a varied and comprehensive educational service in every area, and it is almost solely through the local authorities that the statutory educational system will be operated. The *Education Act of 1902* abolished the old School Boards and Technical Instruction Committees and created Local Education Authorities in their place. To the county councils and county borough councils it gave powers for both elementary and higher education, and to the borough councils which at that time had a population of over 10,000, and to the urban district councils with a population of over 20,000, it gave powers for elementary education only. The Education Authorities thus established have continued in undisturbed possession of these powers until the passage of the Education Act, 1944. In this Act, the term " elementary " education loses its official meaning, and no longer appears in the statute, while the meaning of the term " secondary " education is extended to cover the education of senior pupils of all grades and types of ability. It is thus no longer possible to retain authorities with functions limited to the provision of elementary education only. Many of these authorities had a real interest in the provision of education in their areas, and their services and knowledge of local conditions were too valuable to lose entirely. A solution of the difficulty, well known in local government, of combining the advantages of a large area both in the co-ordination of policy and in strength of financial powers with the lively sense of local responsibility found in a smaller area, has been attempted in this Act. The Local Education Authority for a county is now the county council and for a county borough it is the county borough council (x). But in order that the functions of Local Education Authorities in counties may be exercised with due regard to the circumstances affecting different parts of their areas and with the co-operation of persons having special knowledge of such circumstances, provision is to be made by schemes for partitioning the areas of such authorities into such divisions as may be conducive to efficient and convenient administration, and for constituting bodies of persons to be known as Divisional Executives for the purpose of exercising on behalf of the authorities such functions relating to primary and secondary education as may be specified in the schemes (y). [21]

Joint Education Boards.—The areas and population even of some counties and county boroughs may not be suitable for economic and efficient educational administration, and power is given to the Minister, where it appears to him that it would tend to diminish expense or to increase efficiency or would otherwise be of public advantage, to constitute by order a joint board, to be known as a Joint Education Board, consisting of members appointed by the councils concerned, and direct that the Board shall be the Local Education Authority for the areas of those councils (z). This may apply to the council of any county (a) to the council of any county borough, and to the council of any other borough of which the population was not less than half of the population of the county in which the borough is situated (b). Unless, however, all the councils concerned have consented to the making of the order a local enquiry must be held before it is made. An order constituting a Joint Education Board may provide for regulating the appointment and term of office of members of the Board, the meetings and proceedings of the Board and for determining the manner in which the expenses of the Board are to be defrayed. It may contain such other provisions for the transfer of officers, property and liabilities, for the compensation of any officers who suffer pecuniary loss, for the adjustment of accounts and apportionment of liabilities, etc., as seems expedient to the Minister, and may, with the consent of the council of the county or county borough provide for the transfer to the Board of any functions exercisable by that council

(x) S. 6 (1).
(y) S. 6 (2) and Part III of the First Schedule.
(z) Part I of the First Schedule.
(a) Though not the County of London. S. 117.
(b) This refers to the Councils of two boroughs—Cambridge and Peterborough.

under the Children and Young Persons Acts, 1933 and 1938. A Joint Education Board so constituted will be a body corporate with perpetual succession and a common seal and have power to hold land without licence in mortmain. Any order constituting a Joint Education Board must be laid before Parliament as soon as it is made. [22]

Education Committees.—By s. 4 of the Education Act, 1921 (c), every council having powers under the Act was required to have an Education Committee. The Education Act, 1944, requires every Local Education Authority to establish, in accordance with arrangements approved by the Minister, such education committees as they think it expedient to establish for the efficient discharge of their functions with respect to education (d). Any two or more Local Education Authorities may, with the approval of the Minister, concur in establishing a Joint Education Committee for the consideration of questions of common interest. Where the Minister considers it expedient that two or more authorities should combine for the purpose of exercising some, but not all, of their functions with respect to education, he may, after consulting them, order the establishment of a Joint Education Committee, whether they concur or not, and such an order may provide for authorising the Joint Education Committee to exercise any of those functions on behalf of the authorities concerned. The functions most likely to be exercised by a Joint Education Committee are those connected with further education, especially the provision of higher Technical and Art Institutions which may, for example, be situated in a county borough though serving the needs of a large part of a county area. [23]

Every Education Committee and Joint Education Committee must include persons of experience in education and persons acquainted with the educational conditions prevailing in the area for which the committee acts, but at least a majority of the committee must be members of the authority or authorities concerned. A Local Education Authority may not exercise any of their functions with respect to education until they have considered a report from one of their education committees, unless in their opinion the matter is urgent, or has been sufficiently considered by a Divisional Executive. They may authorise any of their education committees to exercise on their behalf any of their functions with respect to education except the power to borrow money or to raise a rate. The minutes of an education committee are to be open to inspection by any local government elector. An education committee, subject to any restriction imposed by the authority or the order of the Minister by which the committee was established, may appoint sub-committees and may authorise the sub-committees to exercise any of their functions on their behalf. [24]

Divisional Executives.—As mentioned above, in order that due regard may be had to the differing circumstances of particular parts of their areas and benefit may be derived from persons having special knowledge of such circumstances, the Local Education Authorities in county areas (e) are required to review the circumstances of every part of their area and make such schemes of divisional administration as they consider expedient for the exercise by Divisional Executives of specified functions relating to primary and secondary education, unless the Minister is satisfied that the making of such a scheme is unnecessary with respect to the area of any particular Local Education Authority (f). The council of any borough or urban district may claim before the 1st October, 1944, to be excepted from the scheme of divisional administration to be made by the County Education Authority, and the Minister may direct, and in the case of boroughs or urban districts whose populations as certified by the Registrar General, on the 30th June, 1939, were not less than 60,000, or which had not less than

(c) 7 Halsbury's Statutes 132.
(d) First Schedule, Part II.
(e) Though not the County of London; s. 117 (4).
(f) First Schedule, Part III.

7,000 children on the elementary school rolls on the 31st March, 1939, the Minister must direct, that the area shall be excepted from the scheme prepared by the County Education Authority. In the case of a borough or urban district which does not fulfil the conditions mentioned, the Minister must be satisfied, after consultation with such other councils as appear to him to be concerned, that there are special circumstances which justify that the borough or urban district should be so excepted. The council of an excepted district shall then make, after consulting the Local Education Authority, their own scheme of divisional administration which shall provide for the exercise by the council themselves of the functions thereby delegated as the Divisional Executive, and shall transmit the scheme to the Local Education Authority for submission to the Minister. [25]

Before a scheme is submitted to the Minister, the Local Education Authority must consult the council of every county district in their area, and serve a copy of the scheme upon each of those councils, and must publish such notices with respect to the scheme as may be prescribed. [26]

Every scheme of divisional administration must provide for the constitution of the body which is to be the Divisional Executive (except where the council of a borough or urban district is to act in that capacity), specify the conditions subject to which any functions which the Divisional Executives are to be authorised to exercise on behalf of the authority, empower the executive to appoint sub-committees, and define the relationship between the Divisional Executive and the Local Education Authority. The scheme must provide also for the determination by the Minister of any dispute between the Divisional Executive and the Local Education Authority, and make provision for the submission to the authority of estimates and accounts of expenditure for the approval of the authority, but no scheme may authorise any Divisional Executive to borrow money or to raise a rate. The functions to be exercised by a Divisional Executive will vary but will normally be those relating to primary and secondary education, but if the Local Education Authority or an excepted district applies, the Minister, if he thinks it expedient, may direct that provision may be made in the scheme for the delegation to a Divisional Executive of functions under the Act relating to further education The Explanatory Memorandum to the Education Bill issued by the President of the Board of Education in December, 1943 (g), envisages that [redacted]e functions would be delegated where there is a sufficient aggregation of [redacted]lation. [27]

When the [redacted]ster has considered any objections which may be made to him within two months from the date on which the prescribed notices were published, and has made any modifications he considers expedient, he will make an order approving the scheme. The power conferred by the Act on an authority or council to submit a scheme is to be construed to include the power to submit schemes to vary or revoke any scheme previously made by the council, and the Minister may at any time if he is of opinion that a scheme should be varied or revoked or that a further scheme ought to be made, direct an authority or council to make such a scheme and submit it to him. If the population of an excepted district, according to any future census, is less than 60,000, the Minister may, after consulting the Local Education Authority, vary or revoke the scheme if he is of the opinion that the borough or urban district ought no longer to be an excepted district. [28]

The minutes of the proceedings of a Divisional Executive, as in the case of an Education Committee, must be open to the inspection of any local government elector. [29]

Chief Education Officer.—S. 148 of the Education Act, 1921 (h), gave to Local Education Authorities the power to appoint necessary officers, and two or more authorities could appoint the same person to be an officer to

(g) Cmd. 6492.
(h) 7 Halsbury's Statutes 204.

both or all of those authorities A separate section, 149 (h), further empowered them to appoint officers to enforce the Act and any byelaws or orders made thereunder with reference to the attendance of children at school There was no duty on the Local Education Authority to appoint a suitable person qualified to advise them on educational matters as is required in the case of health (the Medical Officer of Health), or finance (Treasurer), though the great majority of authorities did, in fact, appoint Education Officers The Education Act, 1944, imposes the duty on Local Education Authorities of appointing a fit person to be the Chief Education Officer to the authority, and the authority may not make such an appointment except after consultation with the Minister, and for this purpose they must send to the Minister particulars showing the name, previous experience, and qualifications of the persons from whom they propose to make a selection. If the Minister is of opinion that any person whose name is so submitted is not a fit person for the post, he may prohibit his appointment (i) There is no indication as to the qualifications expected of a chief education officer, but it has become the general practice to require the applicants for such posts to possess an honours degree of a university and some teaching and administrative experience, preferably in the education office of a Local Education Authority [30]

General Powers, Duties and Administrative Provisions.—S 7 of the Act lays down in clear and emphatic terms the great responsibilities which have now been laid on Local Education Authorities After stating that the statutory system of public education shall be organised in three progressive stages, to be known as primary education, secondary education and further education, it charges the Local Education Authority for every area, so far as their powers extend, to contribute towards the spiritual moral, mental and physical development of the community by securing that efficient education throughout these stages shall be available to meet the needs of the population of their area In the exercise of all their powers and duties under the Act Local Education Authorities (and the Minister) must have regard to the general principle that, so far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents (j) The duties of a Local Education Authority may be summarised as follows :—

1 To secure that there is available for their area sufficient schools for providing primary education and secondary education, such schools to be sufficient in number, character and equipment, and offering such variety of instruction and training as may be desirable in view of the different ages, abilities and aptitudes of the pupils In carrying out this duty they must have regard to the need for providing for pupils who have not attained the age of five years in nursery schools or classes, to the needs of pupils requiring special educational treatment through disability of mind or body, and to the expediency of securing the provision of boarding accommodation, either in boarding schools or otherwise, for pupils for whom it is considered desirable by their parents and by the authority (k)

2. To maintain as a voluntary school every school which immediately before 1st April, 1945, was a public elementary school provided otherwise than by a former authority (l)

3 To estimate the immediate and prospective needs of their areas and prepare a Development Plan and submit it to the Minister (m)

4. To maintain the county and voluntary schools specified by the

(h) 7 Halsbury's Statutes 205
(i) Education Act, 1944, s 88
(j) S 76
(k) S 8 (2)
(l) S 9 (3)
(m) S 11.

Minister in a Local Education Order and carry out such other duties as may be defined by the Minister in the Order (n).

5. To secure that the school premises of every school maintained by them conform to such standards as may be prescribed by the Minister (o).
6. To make instruments of management or government, and articles of management or government for every county primary or secondary school (p).
7. To provide for collective worship and for religious instruction in every county school (q) in accordance with an agreed syllabus, and provide facilities for denominational religious instruction in certain cases in a county secondary school (r).
8. To ascertain what children in their area require special educational treatment (s).
9. To require parents to cause their children of compulsory school age to receive suitable efficient full-time education (t) and enforce the regular attendance of the children (u).
10. To secure adequate facilities for further education, that is to say, full-time and part-time education for persons over compulsory school age, and leisure time occupations in such organised cultural training and recreative activities as may be suited to the requirements of persons over school age, in accordance with schemes as directed by the Minister (v).
11. On such date as may be determined to establish and maintain county colleges in accordance with a plan to be submitted to the Minister (w), and to enforce the attendance of young persons at the county colleges (x).
12. To provide medical inspection and free medical treatment for pupils in attendance at any school or county college maintained by them (y).
13. To provide, in accordance with regulations, milk, meals and other refreshments for pupils in schools and county colleges maintained by them (z).
14. To secure that adequate facilities for recreation and social and physical training are provided for their area (a).
15. To secure that the person or clothing of any pupil found to be infested with vermin or in a foul condition may be cleansed at suitable premises by suitable persons and with suitable appliances (b).
16. To make arrangements for the provision of such free transport as they think necessary or the Minister may direct to facilitate the attendance of pupils at schools, colleges or classes, or to pay the reasonable travelling expenses of such pupils (c).
17. To require any child who has attained the age of two and who appears to the authority to be suffering from such disability of mind as to make him incapable of receiving education at school, to be medically examined, and to issue a certificate to the Mental Deficiency Authority in the case of any child found to be suffering from such disability (d).
18. To carry out directions of the Minister requiring them to establish, maintain or assist in maintaining any training college or other institution for the training of teachers (e).
19. To furnish such particulars as may be required to the Minister of Health or to the Minister (f).

(n) S. 12.
(o) S. 10.
(p) S. 17.
(q) S. 25.
(r) S. 26.
(s) S. 34.
(t) S. 37.
(u) S. 40.
(v) Ss. 41 and 42.
(w) S. 43.
(x) S. 44.
(y) S. 48.
(z) S. 49.
(a) S. 53.
(b) S. 54.
(c) S. 55.
(d) S. 57.
(e) S. 62.
(f) Ss. 79 and 92.

20. To appoint a fit person to be the chief education officer to the authority (ff).
21. To keep separate accounts of the sums received and expended by them in the exercise of any functions under the Act (g). [31]

In addition to these *duties* Local Education Authorities are given certain *powers* which they may exercise if it seems to them desirable; subject in most cases either to the approval of the Minister, or in accordance with regulations made by him.

1. To establish a new school, to maintain as a county school a school not at the time such a school or to cease to maintain a school (h).
2. To arrange for the grouping of schools under one management (i).
3. To give directions as to the use of the premises of a voluntary school subject to the limitations imposed by the Act (j).
4. To control the secular instruction in every county school and every voluntary school except an aided secondary school, save in so far as may be otherwise provided in the rules of management or articles of government (k).
5. To control the appointment of teachers in county schools, and subject to the provisions with regard to religious education, in controlled and special agreement schools, save in so far as may be otherwise provided by the rules of management or articles of government (l).
6. To provide board and lodging for a pupil if in their opinion education suited to his age, ability and aptitude can best be so provided (m).
7. To provide such clothing as is necessary to enable a pupil to take full advantage of the education provided at a school maintained by them (n).
8. To make special arrangements for the education of a child or young person otherwise than at school where owing to extraordinary circumstances he is unable to attend a suitable school (o).
9. To prohibit the employment of any child who is being employed in such a manner as to be prejudicial to his health or otherwise to render him unfit to obtain the full benefit of the education provided for him (p).
10. To cause an inspection to be made of any educational establishment maintained by them, such inspections to be made by officers appointed by the authority (q).
11. To arrange with the proprietor of a school in their area not maintained by them, upon such financial and other terms as may be agreed, for providing milk, meals and other refreshments at the school, or for providing clothing for any pupil at the school who is inadequately clothed (r).
12. To defray such expenses of children at schools maintained by them, or at special schools, as may be necessary to enable them to take part in any school activities, to pay the fees and expenses of children at schools at which fees are payable and to grant scholarships or other allowances in respect of pupils over compulsory school age (s).
13. To make such provision for conducting or assisting the conduct of research as appears to them desirable for improving the educational facilities provided for their area and to participate in the organisation of conferences for the discussion of questions relating to education (t).

(ff) S. 88.
(g) S. 91.
(h) S. 13.
(i) S. 20.
(j) S. 22.
(k) S. 23.
(l) S. 24.
(m) S. 50.
(n) S. 51.
(o) S. 56.
(p) S. 59.
(q) S. 77 (3).
(r) S. 78.
(s) S. 81.
(t) S. 82.

14. To provide financial assistance to any university or university college (u).
15. To accept gifts for educational purposes (v).
16. To purchase compulsorily any land which is required for the purposes of their functions under the Act (w). [32]

(II.) THE OBLIGATION TO PROVIDE AND RECEIVE EDUCATION

(a) THE DUTY OF THE LOCAL EDUCATION AUTHORITY TO PROVIDE EDUCATION THROUGHOUT THE THREE STAGES

The General Duty.—Under the Education Act, 1921, the Local Education Authority had the duty of maintaining and keeping efficient all public elementary schools in their area, and those authorities which were authorities for higher education had also the power to supply or aid the supply of higher education. There were thus two parallel types of school, with a narrow bridge between them at one point, but continuing after that side by side with little contact. The one type was inferior in status, cramped in its work, and marked with the stigma of poverty (a). The other type was regarded as socially superior, it was freer in its administration, and more generous in its provision. Fortunately, in spite of its handicaps, the elementary school, aided by an awakening public conscience and the devotion and imagination of many teachers and administrators, went far to break the chains laid on it in its early days and again in 1902. This process was for the first time publicly recognised in the Report of the Consultative Committee on the Education of the Adolescent in 1926, which, though limited in its terms of reference to the elementary school, recommended that the schools should be divided according to the age and ability of the children taught in them, primary education being given to children up to the age of about eleven years, and that after that age a variety of types of education should be supplied, all to be known as post-primary. These ideas have now culminated in the Education Act, 1944, which explicitly states that the statutory system of public education shall be organised in three progressive stages to be known as primary education, secondary education and further education (b). In this conception there is no suggestion of inferior or superior. All stages are of equal value, none of them having a right to more generous treatment than others, but each demanding the consideration that its own peculiar nature requires. [33]

The third stage will be considered later in this Introduction (c). In this section we are concerned with the duties of education authorities in the organisation of primary and secondary education only. S. 8 charges them with the duty of securing that there shall be available for their area sufficient schools for providing primary education, that is to say full-time education suitable to the requirements of junior pupils, and for providing secondary education, that is to say full-time education suitable to the requirements of senior pupils, other than such full-time education as may be provided in accordance with schemes of further education. In fulfilling this duty they must have regard to the need for securing that primary and secondary education are provided in separate schools. This is the task which has hitherto been known as " reorganisation " though the meaning has been expanded to include within its scope the Grammar and Junior Technical Schools. The completion of this process, in the light of this expanded meaning, is probably the most fundamental and urgent of all the duties laid on the new Local Education Authorities. The magnitude of the task has been shown in the White Paper of July, 1943 (d), where it is admitted that

(u) S. 84. (v) S. 85. (w) S. 90.

(a) The average cost per child in elementary schools in the year 1936–7 was £15 4s. 5d., and in secondary schools, £28 10s. 0d.

(b) S. 7. (c) See *post*, pp. 55–61. (d) Cmd. 6458, para. 19.

immediately before the war less than 50 per cent. of the children of eleven years of age and over were in senior schools or departments specially organised for children over that age. Moreover, many of those children were in senior schools and departments whose quality it would be an exaggeration to call "secondary". In view of this, arrangements have been made for a transitional period during which, if the authority are satisfied that any school which is for the time being organised for the provision of both primary and secondary education ought to continue to be so organised, provision may be made for its continuing to be so organised during such period as they think necessary (e). [34]

In securing that there shall be available for their area sufficient schools for providing primary and secondary education, s. 8 states that such schools will not be deemed to be sufficient unless they are sufficient in number, character, and equipment to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities and aptitudes, and of the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their respective needs. The school premises of every school maintained by a Local Education Authority will also have to conform to such standards as may be prescribed by the Minister (f). It has also been announced in the White Paper already referred to, that as soon as the supply of teachers and buildings permits, it is intended to secure a progressive reduction in the size of classes in infants' and junior schools. [35]

It should be noted that the duty of the authority to secure that there shall be sufficient schools available for their area, does not necessarily mean that they must themselves provide or even maintain all such schools. Before submitting their Development Plan they must take into consideration *all* schools available for providing primary and secondary education (g). The interpretation clause (h) defines "School" as an institution . . . maintained by a Local Education Authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school; and the expression "School" where used without qualification includes any such school, or all such schools as the context may require. The authority may, therefore, establish schools themselves (i) (and if no other persons or bodies establish or have established sufficient schools they *must* establish sufficient schools themselves) they may maintain schools established by other persons or bodies in which case they are responsible for all the expenses of maintaining the school, except, in the case of an aided or special agreement school, any expenses which under the provisions of the Act are payable by the managers or governors (j); they may assist any school established by other persons or bodies, by making to the proprietor a grant or payment in consideration of the provision of facilities at the school (k). Finally, they may simply take cognisance of the existence of schools to whom the Minister may make grants (l) and of independent schools which may be available for their area and which make suitable provision for primary or secondary education. The powers of an authority under the Act include power to establish, maintain and assist schools outside as well as inside their areas (m). [36]

Primary Education.—The schools available for an area will not be deemed sufficient unless they provide such variety of instruction as may be desirable in view of the different ages, abilities and aptitudes of the pupils and of the different periods for which they may be expected to remain at school. An authority in fulfilling their duty to provide sufficient schools

(e) See proviso to s. 11 (2) (*h*).
(f) S. 10.
(g) S. 11 (2).
(h) S. 114.
(i) S. 9 (1).
(j) S. 114 (2) (*a*).
(k) Ss. 9 (1), 81, 114 (2) (*b*); see also s. 11 (2) (*d*).
(l) S. 100 (1) (*b*) and (*c*).
(m) S. 9 (6).

must have regard to the need for securing that primary and secondary education are provided in separate schools. Primary education is full time education suitable to the requirements of junior pupils, and " junior pupil " means a child who has not attained the age of twelve years (n). This latter definition seems to imply that there is a duty on a Local Education Authority to provide education for children from the date of their birth. Presumably this is within their powers as they may provide education otherwise than at school. They have, however, a more explicit duty to secure that provision is made for pupils who have not attained the age of five years by the provision of nursery schools, or, where they consider the provision of such schools to be inexpedient, by the provision of nursery classes in other schools (o). A nursery school is a primary school which is used mainly for the purpose of providing education for children who have attained the age of two years but have not attained the age of five years (p). So it may be said that the duty of an authority begins with children at the age of two. Previous to the passage of this Act Local Education Authorities had the power, but not the duty, of supplying or aiding the supply of nursery schools (q). The White Paper of July, 1943 (r) points out that such schools are needed in all districts, as even when children come from good homes they can derive much benefit, both educational and physical, from attendance at a nursery school. It is, however, in the poorer parts of the large cities that nursery schools are especially necessary. There is no obligation on parents to provide for the education of their children before the age of five, and there is no obligation on the authority to provide such schools for the whole of their area, though there is an obligation on them to satisfy the Minister that their provision is sufficient to meet the needs of their area. Thus their obligation will depend largely on their estimate of the needs of the different parts of their area, and on the demand made by the parents of young children for this provision. They will do well to remember, however, that demand is often created by supply. There is still considerable controversy as to whether the needs of children under the age of five should be supplied in separate self-contained nursery schools or in nursery classes attached to infants' schools. The argument against such classes has been mainly based on the ground that such provision has in the past been less generous in the amenities necessary for the proper physical and mental care of very young children. Though this need not necessarily be so in the future, and if nursery classes are anywhere to be provided, it is hoped that nowhere in the future will it be so, against the provision of nursery classes it is also argued that nursery schools will be smaller than infants' schools with nursery classes, providing a more suitable environment and being more likely to be nearer the children's homes and less likely to give opportunity for the spread of infectious disease (s) The law has now decided that nursery schools should be provided except where the Authority consider the provision of nursery classes to be more expedient. [37]

The compulsory school age begins at five years and the duty of the authority to secure that primary education is available extends to all the children in their area, and the schools provided must be sufficient to meet their needs. Though there is no obligation imposed by the Act similar to that for the separation of children below the age of five from those above it, except where that is inexpedient, the White Paper of July, 1943, states that it is generally accepted that wherever numbers make it possible, there should be separate schools for infants and juniors, that is to say that the period between the ages of five and eleven should be divided by a change of school when the child is between seven and eight years of age. In practice, numbers especially in rural areas, will make this separation impossible, though in towns conditions make it easier to provide a larger number of separate

(n) S. 114 (1).
(o) S. 8 (2) (*b*).
(p) S. 9 (4).
(q) Education Act, 1921, s. 20 ; 7 Halsbury's Statutes 139.
(r) Cmd. 6458, *para.* 25.
(s) Cmd. 6458, para. 25.

infants' schools which it is also desirable should be nearer the children's homes than the junior schools. At the junior school stage it is not infrequently the practice to separate the children according to sex. Opinion varies on the desirability of this, and the point is probably of little importance at this age. It is of interest to note, however, that nowhere in the Act is there any obligation on an Authority to have regard to the desirability or otherwise of providing separate schools for the different sexes at any age. [38]

Secondary Education.—Until the passage of the Education Act, 1944, the term " Secondary School " connoted a distinct type of school, though it is not defined in the Education Act, 1921, which uses the term " higher education ", and defines this as " education other than elementary " (t). though the term " elementary " is itself not defined. The Board of Education Regulations for Secondary Schools, however, required (u) that a Secondary School should be a school for pupils who intend to remain at least four years and up to at least the age of sixteen. It had to provide a progressive course of general education of a kind and amount suited to an age range of at least from twelve to seventeen, and except with the previous permission of the Board, adequate provision must be made for instruction in the English language, at least one language other than English, Geography, History, Mathematics, Science, Drawing, Singing, Manual Instruction or Domestic Subjects and Physical Exercises. Perhaps the most obvious mark of a Secondary School, however, was that it offered a course leading to the School Leaving Certificate, which, subject to certain credits being gained in certain subjects, was recognised by many professions and by the Universities as a qualification for admission. The Secondary Schools also provided advanced courses for pupils between the ages of sixteen and eighteen, including preparation for the Higher School Leaving Certificate. In 1938 there were 1,398 such schools in England and Wales with nearly 500,000 pupils, and competition for places in these schools was keen. Admission to them for children who had received their previous education in elementary schools, was gained mainly by the Special Place Examination conducted by the Local Education Authorities for Higher Education, and the preparation for this examination unduly hampered the freedom of the Junior Schools in framing a curriculum " thought of in terms of activity and experience, rather than of knowledge to be acquired and facts to be stored " (v). For others, admission was gained by the passing of an entrance test and the payment of the school fees. [39]

In some few areas a similar examination selected children for admission to junior technical schools, normally at about the age of thirteen. These schools usually prepare their pupils for a particular industry or group of industries, and the number of pupils has been regulated by the capacity of the industry to absorb them. The value of their training has been recognised wherever they have been established, and the Spens Report (w) recommended that many more of them should be provided with a lengthened course, starting at eleven years of age. They would thus offer an alternative form of secondary education to that offered in the more academic grammar schools. Those children who failed to secure admission to one or other of these types of secondary schools remained, until they reached the age of 14, when they were allowed to leave, in unreorganised elementary schools or proceeded to the senior school, which " offered a general education for life closely related to the interests and environment of the pupils " (x). In some districts there might be a selective senior school, conducted under the Elementary School Code of Regulations, but to which admission was gained by examination,

(t) Education Act, 1921, s. 170 (3); 7 Halsbury's Statutes 213.
(u) Secondary School Grant Regulations 2 (*b*), S.R. & O. 1935 No. 679.
(v) Report of the Consultative Committee on the Primary School, Ch. VII, s. 75.
(w) Report of the Consultative Committee on Secondary Schools (1938).
(x) Cmd. 6458, para. 29.

and in which the instruction had sometimes a commercial or industrial bias. [40]

The revolution in this system accomplished in law by the Education Act, 1944, though not yet in practice, is especially seen in the new meaning given to secondary education. It is now the duty of every Local Education Authority to secure that there shall be available for their area sufficient schools for providing secondary education, that is to say full time education suitable to the requirements of senior pupils (y), and a senior pupil is a person who has attained the age of twelve years but has not attained the age of nineteen years (z). No fees may be charged in any school maintained by a Local Education Authority (za). The compulsory school age is to be raised as soon as practicable to sixteen (zb), all secondary schools are to have a governing body, and all types of secondary school are to be conducted under a single Code of Regulations. The enormous task therefore, facing the Local Education Authorities, is to translate the law into practice and fuse these diverse elements into a single unified system of secondary education offering such variety of instruction and training as may be desirable in view of the different ages, abilities and aptitudes of the pupils including practical instruction and training appropriate to their respective needs (a). It is true that they must also take account of the different periods for which the pupils may be expected to remain at school (b) and there will probably be a tendency for children who intend to remain at school longer than the compulsory school age to go to one type of school, yet the McNair Report (c) envisages the possibility of children staying even at the senior (or modern) school until eighteen years of age. Thus even this criterion may fail to distinguish in law the grammar school from the technical or modern school. The administrative problem facing all Local Education Authorities is this. Granted that there is no legal or administrative distinction between the various types of secondary school, and that all must reach equal standards in the quality of their accommodation and teaching staff, how can the authority best provide the education suitable to the varying abilities and aptitudes of the senior pupils in their area? [41]

The White Paper of July, 1943 (d) and the Norwood Report (e) appear to envisage the continuation of three main types of school, grammar, technical and modern. The impossibility of selecting at the early age of eleven, the children whose abilities and aptitudes incontrovertibly point to which of the three types of school they should go, makes it essential for it to be possible for any child to be transferred from one type of school to another at, it is suggested, the age of thirteen. This, too, presents serious difficulties, and the proposal has been made in some quarters that all children living in a particular area should go to a single school which would provide, preferably under one roof, but at any rate on the same site, the desirable variety of instruction and training. Against this is urged the inevitably large size of such a school, if sufficient provision is to be made for different courses of instruction. The advocates of this type of school, commonly known as a multilateral school, say that they are not frightened of the consequences likely to result from a school of from 1,000–2,000 pupils. Others attempt to meet this argument, while retaining the multilateral idea, by suggesting that it is not essential to this idea that all the courses of instruction should be given in the same building or even on the same site. They say that separate departments of the school could be set up in different parts of an

(y) S. 8 (1) (*b*).
(z) S. 114 (1).
(za) S. 61.
(zb) S. 35.
(a) S. 8 (1).
(b) *Ibid.*
(c) Report on the Supply, Recruitment and Training of Teachers (1944), para. 74.
(d) Cmd. 6458.
(e) On the Curriculum and Examinations in Secondary Schools (1943).

area, and that these departments could be closely linked by an interdepartmental organisation of the teaching staff for the transfer of pupils and the arrangement of common courses and other facilities. Another approach to the problem is made by those who suggest that there are only two main types of aptitude, one literary and the other practical. If this is so there would be only two main types of secondary school, the Grammar and the Technical, each catering for children of all ranges of ability, from the most intelligent to those who, though backward, do not require special educational treatment. In view of this conflict of opinions, it seems desirable that no single solution should be imposed by the central authority, but that each Local Education Authority in carrying out its duty under the Act should experiment courageously, each adopting the method which seems to them best to suit the particular circumstances of the different parts of their area. Above all they should give to the teachers who are actually confronted with the children, freedom to discover by what methods they may best develop the abilities and aptitudes of their pupils. [42]

In considering what provision for primary and secondary education they should make, the Local Education Authority must have regard to the expediency of securing that, so far as is compatible with the need for providing efficient instruction and training and the avoidance of unreasonable expense to the authority, provision is made for enabling pupils to be educated in accordance with the wishes of their parents (f). The fulfilment of this duty appears likely to conflict with the duty to provide each child with the education suitable to his ability and aptitude, unless it is assumed that all parents are well informed as to the ability and aptitudes of their children. That conflicts of opinion are likely to arise is foreseen by the provision by which the Minister is given power to name the school which a child should attend when there is disagreement between the parent and the authority (g), but the duty of the authority to make provision for enabling children to be educated in accordance with the wishes of their parents seems to lay a clear obligation on the authority at least to ascertain by some means what those wishes are. There is a further duty on the authority in respect of those parents who consider that their children should be educated as boarders. In such cases the authority must have regard to the expediency of providing boarding accommodation, either in boarding schools or otherwise if they agree with the parents that it is desirable (h). They must give particulars in their Development Plan of the arrangements made and proposed to be made by them for the provision of boarding schools (i). Such provision may be desirable not only for those pupils whose home conditions make it necessary for them to reside elsewhere or whose parents may be abroad or have no settled residence, but also for those for whom no suitable provision can be made in the area in which they live. There may be no school in a particular district which provides instruction in such subjects as Greek, or Spanish, or Biology, though such instruction may be given in a school in another part of the country to which a child could be sent if adequate boarding accommodation is available. In this way the authority may be able to provide a greater variety of instruction for the pupils in their area, than if they were limited to that offered in the district in which each child resides. [43]

The provision of boarding accommodation for many of those pupils who suffer from a disability of mind or body, and so require special educational treatment, will be the only way in which the authority can carry out their duty to provide education suitable to the ability and aptitude of such children. For the rest special educational treatment may be provided either in special day schools or in special classes in other schools or otherwise

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(f) S. 76.
(g) See s. 37 (3) (4), and *post*, pp. 42-43.
(h) S. 8 (2) (*d*).
(i) S. 11 (2) (*f*).

than at school. Particulars of whatever arrangements are proposed must be included in the Development Plan (j). [44]

A parent has the right to name the school to which his child shall go, subject to the right of the Local Education Authority to appeal to the Minister (k). He may thus choose a school in the area of an authority other than that in which he resides, or the child may be provided with boarding accommodation in the area of another authority. If so, the authority which provides the education may claim such contributions as may be agreed, or determined by the Minister, from the Local Education Authority in whose area the guardian of the child resides (l), unless the Minister is of the opinion that there is no sufficient reason why the education should not have been provided by the latter authority. If the guardian cannot be found or has no residence in England or Wales then the claim may be made on the authority in whose area the child was born. If that is impracticable, the question may be determined by agreement among the authorities concerned or by the Minister (m). [45]

In order that pupils attending a school maintained by a Local Education Authority may take advantage without hardship to themselves or to their parents, of any educational facilities available to them, a Local Education Authority may defray such expenses as may be necessary to enable them to take part in any school activities in accordance with regulations to be made by the Minister (n). [46]

In connection with their duty to provide facilities for primary and secondary education, a Local Education Authority has the duty of seeing that there are adequate facilities for recreation and social and physical training. For that purpose, with the approval of the Minister, they may establish or maintain, or assist in the establishment or maintenance of camps, holiday classes, playing fields, play centres, and other places (including playgrounds, gymnasiums and swimming baths), for the pupils, and they may organise games, expeditions and other activities and defray or contribute towards the cost of them. They may also provide for the pupils, in accordance with the regulations, clothing suitable for the physical training provided at the school (o). [47]

(*b*) THE CLASSIFICATION OF SCHOOLS AND THEIR ADMINISTRATION

Long before the state took upon itself the obligation to make provision for the education of children, churches, private individuals, city companies and other philanthropic bodies had established and maintained Grammar Schools. The number of these increased during the nineteenth century. Some of them, owing to their reputation, received pupils from widely separated parts of the country, and had to arrange boarding accommodation. Gradually the distinction between the day school serving a particular locality and the boarding school became more pronounced, the former usually retaining the name Grammar School, the latter becoming known as a Public School (p), though this distinction never became complete. Since 1902 Local Education Authorities have had power to supply or aid the supply of higher education. As a result they have themselves provided many new day secondary schools whose methods and outlook were based on those of the old endowed Grammar Schools, many of which they have also aided by means of a deficiency grant or in other ways. In return for

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(j) S. 11 (2) (*e*). For further references to special educational treatment, see under Medical and other Special Services, *post*, pp. 61–68.

(k) S. 37 (2).

(l) S. 106 (1).

(m) The Education (Institution Children) Act, 1923 (7 Halsbury's Statutes 226) is repealed, though its effect is continued as regards those children for whom an authority or former authority was liable immediately before April 1st, 1945; s. 106 (2) (*b*).

(n) S. 81 (1) (*a*).

(o) S. 53.

(p) As to the term "public school", see Appendix A to the Fleming Report, where examples of its use from 1180 to the present time are given.

such aid the endowed schools admitted a number of children from the elementary schools on the result of the Authority's Scholarship or Special Place examination. Other endowed Grammar Schools have received grant direct from the Board of Education and accepted a smaller number of children as a result of the Special Place examination, others accepted grants both from the education authority and from the Board, while many retained their complete independence and accepted no assistance at all from the state (q). [48]

Early in the nineteenth century two religious societies, the British and Foreign School Society and the National Society for Promoting the Education of the Labouring Poor in the Principles of the Established Church, were founded to establish and maintain schools for the elementary instruction of children. They received their income from voluntary subscriptions and from the fees charged, until in 1833 the state began to aid them with an annual grant. In 1870 School Boards were set up with power to levy a rate for the purpose of establishing and maintaining schools in districts not served by a voluntary school. Thus by 1902 there were 5,875 Board Schools provided and maintained by the state, and 14,275 voluntary schools receiving grant from Whitehall in addition to the funds that could be raised from subscriptions and endowments. The Education Act of that year gave the responsibility for the maintenance costs of all public elementary schools to the new Local Education Authorities, leaving the managers of the voluntary schools to find the money for repairs, alterations and improvements to their buildings. The Local Education Authority was made responsible for the efficiency of the secular instruction given in these schools, but the managers retained the right to appoint the teachers, subject to the approval of the Authority, which could not be withheld except on educational grounds, and religious instruction was given in accordance with the provisions of the trust deed of the school. The difficulties experienced by the managers of these schools in finding sufficient money to make the alterations and improvements to their schools necessary to bring them up to the standard set by the schools provided by the councils, has meant the retention of many obsolete buildings and prevented their reorganisation into junior and senior schools in very many areas. The Education Act, 1936, offered a solution of this difficulty by empowering Local Education Authorities for a limited period, to make grants of from 50 per cent. to 75 per cent. of the capital cost of providing new senior schools. In schools so provided the teachers were to be appointed or dismissed by the authority subject to the right of the managers to be satisfied as to the competence of an agreed number of them to give denominational religious instruction. This solution proved not to be very popular. Hardly more than 500 proposals were made, and, owing to the war, only 37 new schools were built. The problem of dealing with 10,553 voluntary schools out of a total of 20,916 public elementary schools (a) thus still remains. [49]

The Education Act, 1944, offers several possible methods by which the managers of the voluntary schools or the governors of aided grammar schools can be assisted to make the necessary alterations and improvements to their schools or to provide new schools in certain cases. The various choices they may make, taken in conjunction with the obligation to provide primary and secondary education in separate schools, form the basis on which schools are classified and administered under the Education Act, 1944. [50]

County Schools and Voluntary Schools.—For the purpose of fulfilling their duties under the Act a Local Education Authority has power to establish primary and secondary schools and to maintain such schools (b). Primary and secondary schools maintained by a Local Education Authority

(q) See generally the Fleming Report on the "Public Schools and the General Educational System," June, 1944.
(a) Figures for March 31, 1938.
(b) S. 9 (1).

(other than nursery schools or special schools) and established by them or by an education authority under previous Acts are to be known as County Schools (c). A Local Education Authority has also power to maintain primary and secondary schools not established by them. Such schools are to be known as voluntary schools (d). Thus broadly speaking, the term "County" school replaces the terms "Council" or "Provided" school in relation to former elementary schools and the term "voluntary school" is to include within its meaning the former "aided" secondary school. In a county school, unless the rules of management or articles of government provide otherwise, the appointment of teachers is under the control of the Local Education Authority and no teacher may be dismissed except by the authority (e). The religious and secular instruction is also under the control of the authority though, as regards religious instruction, they must observe the requirements of the Act (f). [51]

There are to be three categories of voluntary school based on the method adopted by the managers or governors for receiving assistance from the state for the cost of repairs, alterations and improvements to their buildings. The three categories are controlled schools, aided schools and special agreement schools (g). The managers or governors of a voluntary school must make application to the Minister for an order directing that their school shall be in one of these three categories not later than six months after the date on which they received notice of the approval of the Development Plan for the area, or in the case of schools not hitherto maintained by a Local Education Authority at the time of the submission to the Minister of the proposal that it should be so maintained. If they have not made their choice by then the school will be a controlled school. If, however, the Minister is satisfied that the managers or governors can observe the conditions attaching to an aided school or a special agreement school he must direct that their school shall be in that category (h). Whatever category be chosen, no transfer of property or ownership is involved. [52]

Controlled Schools.—If a voluntary school becomes a controlled school then the managers or governors will not be responsible for any of the expenses of maintaining the school. The whole cost of any repairs and alterations will be met by the authority, but only one-third of the managers or governors will be foundation managers or governors, that is to say those managers or governors appointed for the purpose of securing that the character of the school as a voluntary school is preserved and in particular that the school is conducted in accordance with the provisions of the trust deed of the school (i). The appointment of all teachers will be under the control of the authority (j) and no teachers may be dismissed except by the authority (k), but before appointing any person to be the headteacher the Local Education Authority must inform the managers or governors of the school as to the person whom they propose to appoint and shall consider any representations made by the managers or governors (l) with respect to the proposed appointment (m). The religious instruction given to the pupils must be in accordance with a syllabus agreed on by a conference representative of the different denominations, the teachers and the authority (n), unless the parents of any of them request that their children may receive

(c) S. 9 (2).
(d) *Ibid.*
(e) S. 24.
(f) See Section 3 (iii) of this Introduction and s. 25 of the Education Act, 1944.
(g) S. 15 (1).
(h) S. 15 (2).
(i) Ss. 18 (3) (*a*), 19 (2) (*a*) and 114 (1). Foundation managers need not now be appointed in the manner laid down in the trust deed.
(j) Save in so far as may be otherwise provided in the rules of management or articles of government.
(k) S. 24 (1).
(l) Not only the foundation managers or governors as in the appointment of "reserved" teachers.
(m) S. 27 (3).
(n) S. 27 (6) and *post*, pp. 50–55.

religious instruction in accordance with the provisions of the trust deed relating to the school or the practice observed in the school before it became a controlled school. If any parents do so request, the foundation managers, unless they are satisfied that it would be unreasonable to do so, must make arrangements for such religious instruction to be given to those pupils at the school for not more than two periods in each week (o). They must do this whatever the number of the teaching staff at the school, but if it is more than two the teaching staff must include persons (to be known as " reserved teachers ") selected for their fitness and competence to give religious instruction, though the number of reserved teachers must not exceed one-fifth of the number of the teaching staff including the headteacher (oo). If the number of the staff is not a multiple of five it is to be treated as if it were the next higher multiple thereof (p). When the Local Education Authority propose to appoint a person as a reserved teacher they must consult the foundation managers or governors and satisfy them as to that person's fitness and competence to give the religious instruction required, and if the foundation managers or governors are satisfied that a reserved teacher has failed to give such religious instruction efficiently and suitably they may require the authority to dismiss him from employment as a reserved teacher in the school (q). The managers or governors of a controlled school or any other person so entitled by the trust deed, may determine the use to which the school premises (including the playing fields (r)) shall be put on Saturdays unless they are required to be used as a school or for any purpose connected with education or with the welfare of the young for which the Local Education Authority desire to provide accommodation. The foundation managers or governors have the right to determine the use to which the premises may be put on Sundays. Subject to this, however, the Local Education Authority may give any directions as to the occupation and use of the premises as they think fit (s). The caretakers or cleaners at a controlled school are to be appointed and dismissed by the Local Education Authority (t). [58]

Various estimates have been given as to the number of voluntary schools that are likely to become controlled schools, owing to the inability of the managers or governors to raise sufficient money to justify their making application for the school to be classified as an aided school. All the estimates made agree that it is likely that the large majority of voluntary schools will be in this category. In areas such as rural villages where in the past the only available school has been a church school it has been stated that much feeling has been aroused by the fact that nonconformist parents have been forced to send their children to the church school, and unless they have been willing for their children to be singled out by withdrawing them from the religious instruction, they have been obliged to allow them to be taught the catechism and creeds of the Church of England. It has been suggested therefore that voluntary schools in such single school areas should all be controlled schools. It is probable, however, that no voluntary school in any area will be allowed to become controlled if the managers or governors are able to raise sufficient funds to prevent this. The teaching profession, too, have complained that promotion to the headships in nearly half the schools hitherto classed as elementary have been open only to members of the Church of England. If a large number of the voluntary schools become controlled schools, this grievance will have been mitigated, and also many more posts as assistant teacher will be available without religious tests. From the point of view of the Local Education Authority, the power now given to them to meet the whole cost of repairs and alterations to controlled

(o) S. 27 (1).
(oo) The head teacher may not, while holding that position, be a reserved teacher.
(p) S. 27 (2), proviso.
(q) S. 27 (4) and (5).
(r) S. 114 (1).
(s) S. 22 (1).
(t) S. 22 (4).

schools will enable them to bring the premises of many out-of-date schools up to the prescribed standard. The status of controlled schools is also likely to meet the needs of the governors of many former voluntary secondary schools, who have hitherto had to spend the whole of their endowments in the maintenance of the school, while the deficiency has been paid by the authority. Now, if they adopt the status of controlled schools, they can claim that the whole cost of maintenance should be met by the authority and may make a scheme (u) for the administration of the endowment by which the funds under their control may be used in some other way for the benefit of the school. [54]

Aided Schools.—If the managers or governors of a voluntary school can satisfy the Minister that they will be able and willing, with the assistance of the maintenance contributions payable by the Minister under the Act, to defray the expenses for which they would be responsible if the school is an aided school, they must make application to him within the period of six months already mentioned, and he will make an order directing that the school shall be an aided school. The expenses for which they would be liable are any expenses incurred in establishing or carrying on the school, in effecting such alterations (v) to the school buildings as may be required by the Local Education Authority for the purpose of securing that the school premises (w) should conform to the standards prescribed by the Minister in regulations, and also any expenses incurred in effecting repairs to the school premises except those for which the Local Education Authority are responsible, that is to say the managers or governors are not responsible for repairs to the school playground or playing fields or to the interior of any buildings forming part of the school premises, or for repairs necessary as a result of the use of the premises for purposes other than those of the school under a direction of the authority (x). The maintenance contribution payable by the Minister towards the cost of meeting these liabilities is one half of any sums so expended (y). [55]

It may not be reasonably practicable to make the necessary alterations to the existing premises of a voluntary school, or there may have been a movement of population, or action such as slum clearance may be taken under Housing or Town and Country Planning Acts, and the managers or governors may therefore propose that the school should be transferred to a new site. If the Minister is satisfied, after consulting the Local Education Authority and the managers or governors of any other voluntary school that may be affected, that it is expedient to transfer the school he may make an order authorising the transfer, and such a transfer will not be regarded as the discontinuance of the old school or the establishment of a new school (z). [56]

If, on the other hand, the managers or governors of a voluntary school or of two or more such schools decide to discontinue that school or schools, and it is proposed instead that a new voluntary school (zz) should be established in substitution for the former school or schools the proposal will be regarded as the establishment of a new school; but if after consulting the authority or other managers or governors concerned the Minister approves the proposal and directs that the new school shall be regarded as being in substitution for the former school or schools, then the proposal will not be regarded as the discontinuance of a school or schools (a). In both these

(u) Under s. 65.

(v) But not expenses incurred in making alterations in connection with medical inspection or treatment, s. 48, or the provision of milk, meals or other refreshments, s. 49, and see s. 15 (6).

(w) The school premises referred to here do not include the teacher's dwelling house, s. 114 (1), but do include playing fields (s. 114 (1)). The managers or governors are responsible only for alterations to the buildings: site extensions are the L.E.A.'s responsibility; s. 114 (2) (a).

(x) S. 15 (3). (y) S. 102.

(z) S. 16 (1). This obviates the necessity of giving public notice of the proposal, see Section 3 (ii) (c) of this Introduction, *post*.

(zz) A proposal may also be made to establish two or more new schools in substitution for one or more former schools.

(a) S. 16 (2).

cases, when the Minister authorises the transfer of a voluntary school to a new site, and when he directs that a voluntary school shall be deemed to be in substitution for one or more discontinued schools, if the school is to be maintained as an aided school, then he may pay one half of the cost of the substituted premises including the cost of the school site (b). In cases where, though a proposed aided school is not substituted for a discontinued school, yet it is proposed to provide education for a substantial number (c) of displaced pupils, that is to say pupils for whom education would have been provided in some other aided school, if that school had not ceased to be available for them because the school had ceased to be used for providing both primary and secondary education (d), or in consequence of a substantial reduction in the number of pupils for whom education is to be provided in it (dd), then he may certify that a proportion of the cost of the new school is attributable to the provision of places for such displaced pupils, and may make a grant not exceeding one half the proportion so certified (e). But in cases where the Minister makes a grant in respect of a transferred school or of a new school in substitution for an old school he must take into account any sums accruing to the managers, governors or trustees in respect of the disposal of the site of the former school. [57]

In view of the increase in building costs in recent years, and the large number of Church of England and Roman Catholic schools which will be required in a short period of time to be brought up to the prescribed standards of accommodation, the Minister, in addition to paying one half of the cost of such work, may make a loan to the managers or governors of an aided school to help them to meet their share of the initial capital expenditure required by the Development Plan or by the transfer or substitution of a school or towards that proportion of the cost of a new school due to displaced pupils (f). But he may not grant a loan in the case of an aided school in an area which is not also served by any county school or controlled school, except after consulting such persons or bodies of persons as appear to him to be representative of any religious denominations likely to be concerned (such as the Diocesan body or an analogous body representing the Free Churches) and, unless he regards this as unnecessary, after holding a local inquiry. This condition is inserted to meet the difficulty in what has already been referred to as a single school area. The clause will prevent the managers of a voluntary school in such an area, from being assisted, not only by the 50 per cent. grant but also by a loan, in retaining the school as an aided school when it might otherwise have become a controlled school providing religious instruction in accordance with an agreed syllabus, unless the special circumstances of the case, such as the existence in the area of a predominantly Anglican or Catholic population as the case may be, justify the continuance of a denominational school. [58]

Two-thirds of the managers or governors of an aided school must be foundation managers or governors (g). The rules of management or articles of government will regulate the respective functions of the Local Education Authority and of the managers or governors with respect to the appointment of teachers, (h) but the rules or articles must provide for the managers and governors to appoint the teachers subject to the right of the authority to determine the number and to prohibit the dismissal of a teacher, except on the grounds that the teacher has failed to give religious instruction other than instruction in accordance with an agreed syllabus, efficiently

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(b) S. 103 (1) and (2).
(c) There is no definition of "substantial" but 150 was mentioned in the Committee Stage of the Bill; 399 H. of C. Official Report 1784.
(d) As a result of "reorganisation".
(dd) e.g. owing to a reassessment of the recognised accommodation of the school as a result of new building regulations.
(e) S. 104.
(f) S. 105.
(g) Ss. 18 (3) (a) and 19 (2) (b).
(h) S. 24 (2).

and suitably, in which case he may be dismissed by the managers or governors without the consent of the authority (i). The authority must also have power to require the dismissal of a teacher. The authority and the managers or governors may agree on rules or articles which enable the authority to prohibit, without their consent, the appointment of teachers to give secular instruction, and to give directions as to the educational qualifications of the teachers to be so employed. The religious instruction in an aided school is to be under the control of the managers or governors and must be in accordance with the provisions of the trust deed for the school, or if there are no such provisions, in accordance with the practice observed in the school before it became a voluntary school, though if the parents of pupils at the school desire them to be given instruction in accordance with an agreed syllabus and there is no school within a reasonable distance where they could get that instruction arrangements must be made in the school for such instruction for those pupils either by the managers or governors, or if they are unwilling, by the authority (j). [59]

If the Local Education Authority desire to provide accommodation for any purpose connected with education or with the welfare of the young and are satisfied that there is no suitable alternative accommodation they may direct the managers or governors to provide accommodation on the school premises free of charge on any week day when not required for the purposes of the school, though the managers or governors need not provide such accommodation on more than three days in any week. Subject to this the occupation and use of the school will be under the control of the managers or governors. The Local Education Authority may also give directions to the managers or governors as to the number and conditions of service of persons employed at the school for the purpose of the care and maintenance of the school premises (k). [60]

Generally speaking the powers of managers or governors of an aided school do not differ greatly from those hitherto enjoyed by the managers of a former voluntary or non-provided school. As will be seen, the Local Education Authority now has power, subject to the approval of the Minister, to cease to maintain redundant schools (l) and, of course, the managers must comply with the requirement that primary and secondary education shall be given in separate schools, though under the previous law they could resist reorganisation proposals involving a non-provided school. On the other hand they can now claim grants up to one half the cost of meeting their financial liabilities in connection with the repair and alteration of the school and in some cases for the provision of a new school. [61]

Special Agreement Schools.—By the Education Act, 1936, for the first time, Local Education Authorities were empowered to assist financially towards the erection of non-provided schools. This Act allowed contributions of not less than 50 per cent. and not more than 75 per cent. of the cost of providing new non-provided senior schools, to be made to the managers of such schools. As has already been pointed out few such proposals were put into effect and only 519 were made (of which 289 were in respect of Roman Catholic Schools). The Education Act, 1944, now enables these proposals to be revived with such modifications as may be necessary in view of the changed circumstances. [62]

Within the time limit of six months from the date upon which the local education order for the area comes into force, the Local Education Authority has power to make a new agreement, with the approval of the Minister, in respect of proposals which had previously been submitted to a former authority within the period of time allowed by the Education Act, 1936 (a).

(i) S. 28 (2).
(j) S. 28 (1).
(k) S. 22 (4) and (5).
(l) See next Section of this Introduction, *post*, pp. 39-41.
(a) Education Act, 1936, s. 8 (2), 29 Halsbury's Statutes 123, allowed proposals to be submitted before March 1, 1938, or, if the Authority agreed, before September 1, 1938, or, in certain cases within such extended period as may have been sanctioned by the Board of Education.

Such an agreement must be for the purpose of facilitating the execution of the provisions relating to school accommodation for senior pupils contained in the Development Plan for the area, and may provide for the making of a grant by the Local Education Authority of between one half and three quarters of the cost of executing the proposals, and for the appointment of such number of reserved teachers as may be agreed for the purpose of giving religious instruction in accordance with the provisions of the trust deed or with the previous practice of the school (b). Agreements made under the provisions of the Education Act, 1936, were almost invariably for a contribution of 75 per cent. of the cost of the proposals and frequently allowed for all the teachers to be reserved teachers. [63]

Schools erected as a result of such agreements will be known as Special Agreement Schools, and their administration has points of similarity with both controlled and aided schools. As in the controlled school, the appointment of teachers, save in so far as may be otherwise provided by rules of management or articles of government, will be under the control of the Local Education Authority (c). In both types of school, reserved teachers, selected for their fitness and competence to give denominational religious instruction, must be appointed by the authority. In the controlled school they will be appointed if the parents of pupils in attendance request the denominational religious instruction. In the special agreement school, however, the proportion of reserved teachers will be decided in the agreement (d). In both schools the foundation managers or governors must be consulted by the authority before they appoint a reserved teacher, and unless the foundation managers or governors are satisfied as to the teacher's fitness and competence to give the denominational religious instruction, the authority may not appoint that person to be a reserved teacher, and if the foundation managers or governors are of the opinion that a reserved teacher has failed to give such religious instruction efficiently and suitably, they may require the authority to dismiss him from employment as a reserved teacher (e). [64]

In other respects, however, the special agreement school has more resemblance to the aided school. In both aided and special agreement schools the body of managers or governors will consist as to two thirds of foundation managers or governors appointed to preserve the character of the school as a voluntary school, and as to one third by the minor authority, and the Local Education Authority (f), while in the controlled school the proportions are reversed. In both aided and special agreement schools the religious instruction is under the control of the managers or governors and must be in accordance with the provisions of the trust deed or the previous practice of the school, though if the parents of any pupils desire them to receive instruction in accordance with an agreed syllabus, and cannot with reasonable convenience send them to a school where an agreed syllabus is in use, then arrangements must be made by the managers or governors, or if they are unwilling, by the Local Education Authority, for instruction in accordance with an agreed syllabus to be given to those pupils during the time set apart for religious instruction (g). [65]

The liabilities of managers and governors of special agreement schools are the same as for those of aided schools. They are responsible for any expenses incurred in establishing the school, in effecting such alterations to the school buildings as may be required by the Local Education Authority to bring the school up to the prescribed standard, and for any expenses incurred in effecting repairs to the school premises except repairs to the playground, playing fields or the interior of the school premises for which

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(b) See Education Act, 1944, s. 15 and the Third Schedule.
(c) S. 24 (1).
(d) S. 28 (3) and Third Schedule, para. 7.
(e) S. 28 (4).
(f) S. 18 (3) and 19 (2), and see definition of "foundation managers" in s. 114 (1).
(g) S. 28 (1).

repairs the Local Education Authority are responsible (h). The managers or governors of a special agreement school are also entitled to the payment by the Minister of one half of the amount of any such expenditure (i), but, of course, they may not receive from the Minister any payments in respect of any expenditure incurred by them in the execution of repairs or alterations for which provision is made in the special agreement relating to the school, and for which they will receive the agreed proportion from the Local Education Authority. In all other respects their right to a maintenance contribution is the same as for the managers or governors of an aided school, and they may apply to the Minister for a loan to meet their share of any initial capital expenditure on the same terms and conditions as for an aided school (j). [66]

The managers or governors of a special agreement school may at any time repay to the Local Education Authority the grant made to them by the authority in accordance with the agreement. They can then apply to the Minister for an order revoking the previous order by which the school became a special agreement school, and if the Minister is satisfied that they will be able and willing with the assistance of the maintenance contribution to defray the expenses for which they would be liable, he must direct that the school shall be an aided school (k). If at any time the managers or governors of either an aided school or of a special agreement school are unable or unwilling to carry out their obligation to pay the expenses of any necessary alterations or repairs for which they are liable, it is their duty to apply to the Minister for an order revoking the order by which the school became an aided school or a special agreement school, and the school will then become a controlled school (l). [67]

General.—If any local Education Authority, or the managers or governors of any county school or any voluntary school fail to discharge any duty imposed upon them by or for the purposes of the Education Act, 1944, the Minister may make an order declaring the authority, the managers or the governors, as the case may be, to be in default. The order will then give directions for the purpose of enforcing the performance of the duty, and such directions are enforceable, on an application made on behalf of the Minister, by mandamus (ll). Any person interested may complain to the Minister of the default in question, or he can act upon his own initiative. [68]

If complaint is made that the managers or governors of a school have acted or are proposing to act unreasonably, the Minister may give such directions as he thinks expedient even though the law allows them discretion to act according to their opinion (m). For example, they may require the dismissal of a teacher who, in their opinion, has failed to give denominational religious instruction efficiently and suitably. If there is a dispute between the Local Education Authority and the managers or governors in connection with their powers and duties under the Act, the matter may be referred to the Minister and determined by him even though the power or duty is contingent on the opinion of the authority or the managers or governors (mm). [69]

The managers or governors of many schools may, if they are unable to get assistance, find great difficulty in raising sufficient funds to enable them to satisfy the Minister that they are able to carry out their liabilities for the alteration and repair of their buildings, as many denominational schools have very small endowments which, if they are taken separately and only in relation to individual schools, would provide a negligible proportion of such costs. If added together, however, there might be sufficient to meet the liabilities of one or two schools in any area. It has not hitherto always been possible to do this, as the endowments are frequently restricted to particular parishes. Nor, in many instances has it been

(h) S. 15 (3).
(i) S. 102.
(j) Ss. 103–105.
(k) S. 15 (5).
(l) S. 15 (4).
(ll) S. 99 (1).
(m) S. 68.
(mm) S. 67 (1).

possible to raise funds from the sale of a school and its site when it has been discontinued, as the trust may provide for the site to revert to the estate out of which it was granted should the school cease to function. Power is now given to the Minister to vary such endowments so that they may be applied to other schools by making a new scheme under the Endowed Schools Acts, 1869 to 1908. Such new schemes will enable a particular religious denomination for example, acting through such bodies as the Diocesan Education Committee, to participate more effectively in the administration of the statutory system of public education. The Minister may also direct that a school site may be sold, either if the reversioner cannot be found, or, subject to the right of a reversioner to claim compensation, if he can be found and consents to the sale (n). There is no provision, however, for dealing with a case in which the reversioner does not consent to the sale. [70]

Before leaving the question of the rights and responsibilities of the managers or governors of voluntary schools, it should be noted that no person is liable to pay any local rates on an assessment of the premises of such schools (o). This has hitherto been the case with voluntary schools under the previous law, but, secondary schools not provided by a Local Education Authority, and all schools provided by a Local Education Authority, were rated. Now, all schools maintained but not provided by a Local Education Authority, that is to say all voluntary schools, whether primary or secondary, are exempt from rates, even though, as in the case of controlled schools, all financial responsibility has passed to the authority. All other schools are liable to pay rates. [71]

Managers and governors.—The Education Act, 1921, required all public elementary schools provided by a County Local Education Authority to have a body of managers, not more than four of whom were to be appointed by the Education Authority, together with not more than two appointed by the minor authority. Public elementary schools provided by a borough or urban district had a body of managers only if the authority thought fit. All public elementary schools not provided by a Local Education Authority were required to have a body of managers, not more than four of whom were to be foundation managers, together with not more than two appointed by the Education Authority, or in the case of a County Education Authority one by that authority and one by the minor authority (a). The managers of a public elementary school provided by a Local Education Authority dealt with such matters, and subject to such restrictions, as the authority determined (b). It was therefore possible for the managers of such schools to have many powers or almost none at all. The managers of non-provided schools had, however, all powers of management required for the purpose of carrying out the provisions of the Act, and, subject to the power of the Local Education Authority to give directions as to the number and educational qualifications of the teachers and to dismiss a teacher on educational grounds, the managers had the exclusive power of appointing and dismissing teachers (c). [72]

Secondary schools not provided by a Local Education Authority normally had a body of governors set up by a scheme made under the Endowed Schools Act, 1869 (d), as later amended, or under the Charitable Trusts Acts. There was, however, no statutory requirement that secondary schools provided by a Local Education Authority should have governors, but in fact there were few such schools without a governing body, though in boroughs it was not unusual for a sub-committee of the authority to act in that capacity. The new conception of secondary education as education suitable to the age, ability and aptitudes of pupils between the ages of eleven

(n) S. 86.
(o) S. 64.
(a) Education Act, 1921, s. 30; 7 Halsbury's Statutes 146.
(b) *Ibid.*, s. 35 (1); 7 Halsbury's Statutes 149.
(c) *Ibid.*, s. 29 (2); 7 Halsbury's Statutes 143.
(d) S. 10; 7 Halsbury's Statutes 244.

and nineteen years, involved some revision of the law, and with a view to encouraging each school to develop in its own individual way, the Education Act, 1944, now requires all schools maintained by a Local Education Authority to have a body of managers or governors. The managers or governors of voluntary schools have, of course, certain statutory powers already described, but it is no less necessary, in order to attain that unity *without uniformity which it was stated in the House of Commons* was one of the objects of the Government in introducing the Bill, that the managers and governors of county schools should have a real function to perform in the administration of their schools. [73]

" Every school of whatever type or category must have an individual life of its own, as well as a place in the local system. The fact that aided schools are assured under the Bill of an independence hardly, if at all, less than that which they enjoy at present, makes it the more desirable to seek means to secure that reasonable autonomy is enjoyed also by county, controlled and special agreement schools. Independence implies, not freedom from proper control, but freedom to exercise legitimate and appropriate functions " (f). It has already been suggested (g) that the solution of the problem of the different types of secondary school may well come from the experiments made in the schools themselves. Such experiments are more likely if the schools have a measure of independence subject to reasonable safeguards as to the general function the school is to have in a particular community. [74]

The Education Act, 1944, requires that for every maintained primary school (h) there shall be an instrument of management providing for the constitution of a body of managers for the school, and for every maintained secondary school there shall be an instrument of government providing for *the constitution of a body of governors for the school* (i). Instruments of management or government in the case of county schools are to be made by the Local Education Authority, and in the case of a voluntary school by an order of the Minister (j). [75]

Every primary school must be conducted in accordance with rules of management made by an order of the Local Education Authority and every secondary school must be conducted in accordance with articles of government made, in the case of a county school, by an order of the local Education Authority and approved by the Minister, and, in the case of a voluntary school, by an order of the Minister (k). If any provision in any instrument or rules of management or in any instrument or articles of government is inconsistent with the provisions of a trust deed relating to the school the Minister may, if it is in the interests of the school to do so, make any necessary modifications in the provisions of the trust deed. *Before making any order* relating to the instrument or articles of management or government of any school, the Minister must give an opportunity to the Local Education Authority, and to any other persons concerned in the management or government of the school, to make representations to him, and he must have regard to all the circumstances of the school, and in particular to the question whether the school is, or is to be, a primary or secondary school, and in the case of an existing school to the manner in which the school has been conducted

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(f) Cmd. 6523, May 1944, Principles of Government in Maintained Secondary Schools, para. 5.

(g) *Ante*, p. 22.

(h) The term " primary school " includes " nursery schools ", s. 9 (4). All the provisions of the Act for the management of primary schools also refer therefore to the management of nursery schools. It must also be remembered that so long as any county school or voluntary school is used for providing both primary and secondary education, references to primary schools shall be construed as including references to that school, and references to secondary schools shall be construed as excluding references thereto, though if primary education in any school is provided in a separate junior or preparatory department the Minister may direct that the school may be deemed a secondary school for the purposes of the Act. See s. 114 (3).

(i) S. 17 (1).

(j) S. 17 (2).

(k) S. 17 (3).

hitherto (l). It is by this requirement that it is hoped to take account of the very different histories and traditions of the various schools, especially those now regarded as secondary. Thus the articles of government of a school which was previously a non-provided senior school may have articles of government differing in many ways from the articles of government of an ancient endowed grammar school preparing many pupils each year for the universities. Though it may be hoped that as soon as possible the quality of the education given in each may be comparable, it is not necessarily in the interests of the pupils that the same type of education should be given in each. [76]

There are, however, certain general principles to be observed in the constitution of bodies of managers and governors which define the proportions in which the Local Education Authority, the minor authority and the foundation managers or governors appointed in accordance with the provisions of a trust deed relating to a school, are represented on the body of managers or governors. It should perhaps be pointed out here that any powers given to the Local Education Authority in connexion with primary or secondary education, may be delegated by that authority to a Divisional Executive set up in accordance with the First Schedule of the Act, and references made here to the Local Education Authority may, in such cases, be regarded as references to the Divisional Executive. [77]

As regards primary schools the instrument of management for every county school serving an area in which there is a minor authority (m) must provide for the constitution of a body of managers consisting of such number of persons, not being less than six, as the Local Education Authority may determine, provided that two-thirds of the managers shall be appointed by the Local Education Authority and one-third by the minor authority. If there is no minor authority then the body of managers shall be constituted in such manner as the Local Education Authority may determine. The instrument of management for every voluntary school must provide for a body of managers consisting of such number, not less than six, as the Minister may determine after consulting the Local Education Authority, so however, that for an aided or special agreement school two-thirds must be foundation managers and for a controlled school one-third shall be foundation managers, and where the school serves an area where there is a minor authority, of those managers who are not foundation managers not less than one-third, nor more than one-half, shall be appointed by the minor authority and the remainder by the Local Education Authority (n). It has been suggested that in single school areas one of the managers appointed by the minor authority might well be of a different denomination from that providing the voluntary school. He would thus be able to represent the point of view of the parents of those children attending the school who would not otherwise have any influence in the control of the school (o). [78]

The legal provisions for the instrument of government for a secondary school are very similar to those for the instrument of management of a primary school. The only differences are, first, there is no obligation for the governing body to consist of not less than six persons, though it is very unlikely that any Local Education Authority or the Minister would agree to a body of governors consisting of less than six persons. Secondly, there is no provision for the representation of the minor authority, so that all governors, who are not foundation governors, are appointed by the Local Education Authority (p). The White Paper on Principles of Government in Maintained Secondary Schools (q) suggests that among the persons

(l) S. 17 (5).
(m) See the definition of " minor authority " in s. 114 (1).
(n) S. 18 (3).
(o) If there is no properly constituted body of managers or governors, the Minister may make such appointments and give such directions as he thinks desirable for the constitution of a body of managers or governors, s. 99 (2).
(p) S. 19.
(q) Cmd. 6523.

appointed to be governors of a secondary school there should be representatives of a University and of the commercial and industrial life of the district, and that the interests of the teaching staff, parents and former pupils should be remembered. In the case of girls' schools a proportion of them should, of course, be women. [79]

Any manager or governor may resign his office, and if he was appointed by a Local Education Authority, that authority may remove him (r). The proceedings of a body of managers or governors will not be invalidated by any vacancy or by any defect in the election, appointment or qualification of any manager or governor. There must be a quorum of not less than three or one-third of the whole number whichever is the greater, and the chairman has a casting vote. Meetings may be convened by any two of them, but in any case they must hold a meeting at least once in every three months. The minutes of the proceedings of the managers or governors of any county or voluntary school must be kept in a book which shall be open to inspection by the Local Education Authority (s). [80]

In towns the management of elementary schools provided by a Local Education Authority has, under previous Acts, been frequently carried out by a sub-committee of the Authority. In effect this is the grouping of schools under one management. If each school were required to have its own separate body of managers or governors it might, in some cases, be difficult to find sufficient suitable persons willing and able to undertake the duties of managers or governors. The Education Act, 1944, allows the Local Education Authority to group any number of schools under one governing body, whether such an arrangement relates exclusively to primary schools or to secondary schools or partly to primary and partly to secondary schools (t). They cannot, however, include in such arrangements any voluntary schools unless the managers or governors of such schools give their consent. In the case of a proposal that a controlled school should be included in such an arrangement, it may be thought unlikely that the managers or governors would disagree, as a majority of them are appointed by the Local Education Authority. The foundation managers or governors do not seem to be protected in this case by the provision in the definition (u) that references in the Act to managers or governors shall, in relation to any function thereby conferred or imposed exclusively on foundation managers or governors, be construed as references to such managers or governors. If the Local Education Authority and the managers or governors of any auxiliary schools agree to an arrangement in which any or all the schools to be grouped are voluntary schools, the number of persons to be appointed to constitute the body of managers or governors may also be determined by agreement, or failing such agreement, by the Minister. If the arrangement includes primary schools then the minor authority, if any, must be adequately represented on the governing body. The proportions in which the minor authority, the Local Education Authority and the foundation managers must be represented on the body of managers or governors constituted for a single school, need not be observed in the constitution of such a body for a group of schools, nor will the order constituting a body of managers or governors even exclusively for voluntary schools, be made by the Minister as it would be for a single voluntary school. An arrangement including voluntary schools in the group may be terminated at any time by agreement between the governing body so constituted and the Local Education Authority, or failing such agreement by twelve months' notice served by either side. If no voluntary schools are included in the group, the Local Education Authority may terminate it at any time. [81]

There are several different ways in which the schools in an area might well be grouped, but it would, of course, be undesirable to group too many schools under one body of governors, as in a very large group the different

(r) S. 21.
(s) S. 21 and Fourth Schedule.
(t) S. 20.
(u) S. 107 (1).

schools would not be likely to receive encouragement to develop "an individual life of their own". On the other hand there may be many advantages, not only in easier administration, to be derived from the grouping of a smaller number of schools under one governing body. Schools of the same foundation or denomination may desire to be grouped together. In some areas, it may be thought convenient to group together all the grammar schools. But undoubtedly, greater advantage in the difficult task of fusing the different types of secondary school into one system, in which each pursues a common aim by varying methods, would be gained by grouping all types of secondary school in a particular area under one body of governors. In that way each might contribute to their common problems and the transfer of pupils from one type of school to another would be made easier. Those authorities who are sympathetic to the idea of the multilateral school but who, for one reason or another, cannot take that step immediately, will naturally favour grouping their secondary schools in this way. An alternative method of grouping the schools under one body of governors would be to group a number of primary schools and the secondary schools they serve. Such a grouping should aid the allocation of pupils from the primary schools to that type of secondary school most suited to their ability and aptitude, and it would provide an opportunity for ensuring that the curricula of the primary schools and of the secondary schools are related and their work organised in "progressive stages". [82]

In county schools, and, subject to the provisions of the Act as regards religious education, in every voluntary school except an aided secondary school, the secular instruction, unless the rules of management or articles of government provide otherwise, is to be under the control of the Local Education Authority. In an aided secondary school, subject to similar limitations, the secular instruction is to be under the control of the governors. The power to control the secular instruction includes the power to determine the times at which the school sessions begin and end each day, the times at which the school terms begin and end, the school holidays, and to require that pupils at the school shall attend any class not conducted on the school premises (v). [83]

The rules of management of a primary school are made by the Local Education Authority. The managers even of a voluntary school will therefore have only such powers, other than those expressly conferred on them by the Act, as the authority think it expedient to give them. The articles of government of a secondary school, however, must be approved by the Minister in the case of a county school and in the case of a voluntary school must be made by him. The articles of government of every secondary school must in particular determine the functions to be exercised in relation to the school by the Local Education Authority, the body of governors and the head teacher respectively (w). Fears have been expressed by some headmasters of ancient endowed grammar schools that the Local Education Authority will interfere in the internal organisation of the schools. On behalf of the Local Education Authorities it has sometimes been claimed that headmasters of such schools have been indifferent to the educational needs of the community and have served rather a tradition the value of which is no longer undisputed. Governors, for their part, have inclined, according to their constitution, in some cases to the views of the Local Education Authority, and in others to those of their headmaster. Such differences have long enough hampered the achievement of a national system of education, and it is much to be hoped that now that the functions to be exercised by those who, in their different ways, serve the children in the schools, are to be clearly determined in the articles of government, less cause for disagreement will arise. Guidance in drawing up these articles is given in the White Paper on the Principles of Government in Maintained Secondary Schools (x). It is there suggested that the governors and the

(v) S. 23. (w) S. 17 (3) (*b*.) (x) Cmd. 6523.

authority should be closely associated in the appointment of the headmaster or headmistress, either by a joint committee consisting of an equal number of representatives of the governors and of the authority with a chairman appointed by the authority, or by the authority from a short list drawn up by the governors. The appointment of assistants would be by the governors in consultation with the head, subject to confirmation by the authority. As regards the internal organisation and curriculum the authority would have the right to settle the general educational character of the school and its place in the local system, the governors would have the general direction of the conduct of the school and of the curriculum, and the headmaster of headmistress would control the internal organisation, management and discipline of the school. The ultimate responsibility for deciding which type or secondary education an individual pupil should follow must rest with the Local Education Authority, but the governors and headmaster or headmistress should play an essential part in the selection of all pupils for their particular school. The White Paper concludes by pointing out that however carefully the respective functions of the Local Education Authority, the governors and the head teacher are determined by the articles of government, disputes are liable to arise. If so, recourse may be had to the Minister to determine the dispute (y). It is to be hoped, however, that given the co-operation which is essential to any successful scheme of school government disputes will be of rare occurrence. [84]

Assisted and other schools.—In dealing with the classification of schools and their administration mention has so far only been made of maintained primary and secondary schools. Besides these there are many schools which, under the provisions of previous Education Acts, have received grants from the Local Education Authority or from the Central Authority or from both, to supplement the income they received from school fees and their endowments, in return for making a proportion of the places in the school available for children either free, or on payment only of that part of the tuition fee for which the financial circumstances of the holder of a scholarship awarded by an authority qualify him (z). Those schools which received grant from a Local Education Authority were normally required to offer a minimum of 25 per cent. of their admissions in the previous year on these terms, and a school which received grant from the Central Authority usually had to offer free places to a minimum of 10 per cent. of such admissions. Some of these schools, whose endowments are not large, may choose to become aided voluntary schools (za). Many of them, however, if their endowments are substantial may desire to continue to receive aid from either the Local Education Authority or from the Central Authority in which case they may continue to charge fees. The Local Education Authority, in their Development Plan, must include information as to any arrangements proposed to be made with respect to schools not to be maintained by the Authority, for the purpose of helping to secure that there shall be sufficient primary and secondary schools available for their area (a). Regulations made by the Minister will empower Local Education Authorities, for the purpose of enabling pupils to take advantage without hardship to themselves or their parents of any educational facilities available to them, to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable (b). Where a Local Education Authority make to the proprietor of any school which is not maintained by the authority any grant in respect of the school, or any payment in consideration of the provision of educational facilities thereat the school shall be deemed to be assisted by the Authority (c). In some areas such a school may be the only grammar school, or at least be an essential part of the grammar school provision of the town, and unless both the Local Education Authority are

(y) S. 67.
(z) Grant Regulations for Secondary Schools S.R. & O. 1935 No. 679.
(za) An aided secondary school does not automatically become a voluntary school: see ss. 9 (1) and 13 (2). (a) S. 11 (2) (*d*). (b) S. 81 (*b*). (c) S. 114 (2) (*b*).

willing to offer a generous provision of free places and the governors of the school are willing to accept such scholars on the nomination of the authority, the provision of secondary education available for all pupils could hardly be regarded as sufficient. The same remarks apply to those schools which choose to receive grant direct from the Minister, under the power which he has to make payments to persons other than Local Education Authorities in respect of expenditure incurred for the purposes of educational services provided by them (d). It has been announced that the list of schools in receipt of direct grant from the Ministry will be revised, though the number of them will not be increased. [85]

Besides making formal arrangements with an assisted school to take an agreed proportion of pupils annually, a Local Education Authority may use their power to pay the whole or any part of the fees and expenses payable in respect of pupils attending schools at which fees are payable, to send individual pupils to independent schools which receive no assistance in other ways either from an authority or from the Minister. Proposals have been made that a limited number of pupils attending schools in the statutory system, should be sent to the greater public boarding schools. Power to do this, if the Local Education Authority so desire, is clearly conferred by s. 81 of the Act mentioned above, and presumably the words " and expenses " can be taken as including power to contribute towards the cost of boarding accommodation. (The power conferred by the proviso to s. 61 (2) is limited to board and lodging provided at maintained schools only.) Some authorities have expressed fears of the social effects of such action on the pupils sent to the wealthier schools and on the schools from which they are taken (dd). The Minister himself also has power, for the purpose of enabling pupils to take advantage without hardship to themselves or their parents of any educational facilities available to them, to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable (e). He also has the duty to cause inspections to be made of any school, including independent schools, though a Local Education Authority may only cause inspections to be made of schools maintained by the authority (f). [86]

The proprietor of every school, maintained, assisted or independent, must keep in accordance with regulations made by the Minister, a register of all children of compulsory school age who are pupils at the school. The register may be inspected, in accordance with the regulations, and such periodical returns as to the contents of the register as are prescribed, will have to be made to the Minister and to Local Education Authorities (g). [87]

Summary.—It may be useful to summarise here the different types of school according to the new classification under the Education Act, 1944. There are then the following twelve types of school :

1. Nursery Schools (h).
2. County Schools (*a*) Primary
   (*b*) Secondary
3. Voluntary Schools (*a*) Controlled Primary
   (*b*) Controlled Secondary
   (*c*) Aided Primary
   (*d*) Aided Secondary
   (*e*) Special Agreement Secondary

   } Maintained schools
4. Special Schools (h).
5. Assisted Schools.
6. Direct Grant Schools (aided by the Minister).
7. Independent Schools. [88]

(d) S. 100 (1) (*b*).
(dd) This question is fully discussed in the report of the Fleming Committee on The Public Schools and the General Educational System (1944) which recommends alternative schemes for the association of the public boarding and day schools with the statutory system, by admitting to these schools a proportion of pupils from maintained schools.
(e) S. 100 (1) (*c*). (f) S. 77. (g) S. 80.
(h) Which may be " maintained " or " assisted ", but are not " county " or " voluntary " schools ; s. 9 (2).

(c) THE ESTABLISHMENT AND DISCONTINUANCE OF SCHOOLS

The provisions of the Education Act, 1921, with regard to the establishment and discontinuance of public elementary schools, required the Local Education Authority or any other person proposing to provide a new school to give public notice of their intention to do so. Three months were allowed for the hearing of objections by the Board of Education before the proposal could be proceeded with (a). The Local Education Authority had the duty of maintaining and keeping efficient all public elementary schools within their area which were necessary (b). If they proposed to discontinue such a school on the ground that it was no longer necessary, and there was a dispute on this point, the Board of Education were required to determine, without unnecessary delay, whether it was necessary or not. In doing so, and in deciding on an appeal as to the provision of a new school, they had to have regard to the interest of secular education, to the wishes of parents as to the education of their children and to the economy of rates (c). If there were more than thirty children in average attendance at the school, the Board could not treat the school as unnecessary unless there was accommodation available in another council school if the school were a council school, or if the school were a denominational school, in another school of the same denomination (d). Thus a new non-provided school could be established in an area although there may have been spare accommodation in a neighbouring council school, and it was impossible to close a denominational school with more than thirty children unless there were another school of the same denomination in the neighbourhood to which the children could go, although there might be a council school available to accommodate them. [89]

The Education Act, 1944, no longer requires any of these conditions to be observed. The Minister has complete freedom to decide what is in the interests of education in any particular case (e). All proposals by a Local Education Authority to establish a new county school, to maintain as a county school a school not hitherto so maintained, or to cease to maintain a redundant county school, or voluntary school (unless the managers or governors propose to discontinue it) must be submitted to the Minister (f). If any other persons propose that a school established by them, or to be established by them, should be maintained by the Local Education Authority as a voluntary school, they must, after consulting the authority, submit the proposals to the Minister. Public notice of such proposals either by a Local Education Authority or by any other persons, must be given in the prescribed manner, and the Local Education Authority, the managers or governors of a voluntary school affected by the proposal or ten local government electors may submit objections to the Minister within three months of the first publication of the notice. But such notice will not be required in cases where it is proposed that a school that has hitherto received grants from the Minister, should be maintained by the authority as a voluntary school if all the parties agree. The Minister may approve the proposal after making such modifications as appear to him to be desirable, though in the case of a proposal that a voluntary school should be maintained as a county school he may approve the proposal only if an agreement has been made between the authority and the managers or governors, and due notice of the agreement has been given to any other persons who, by virtue of the trust deed, have an interest in the school, and to any other person who may be concerned. The agreement must effect the transfer of all

(a) Education Act, 1921, s. 18; 7 Halsbury's Statutes 138.
(b) *Ibid.*, s. 17 (1); 7 Halsbury's Statutes 137.
(c) *Ibid.*, s. 19 (1); 7 Halsbury's Statutes 139.
(d) Education (Necessity of Schools) Act, 1933; 26 Halsbury's Statutes 130.
(e) Though it may not be desirable to close every village school with less than thirty children, there may be cases in towns where there are schools with more than thirty children which it would be more economical and efficient to close.
(f) Education Act, 1944, s. 13 (1).

interests necessary to enable the authority to maintain the school as a county school, though the whole of the interest need not be transferred, conditions may be imposed, and provision may be made as to the consideration for the transfer (g). [90]

When proposals for the establishment of a new school have been approved by the Minister, specifications and plans of the school premises must be submitted to him. The plans must, of course, conform to the building regulations made by the Minister (h). If the proposed school is to be a voluntary school, the Local Education Authority must first be consulted. After the plans have been approved, it will be the duty of the Authority or other persons submitting them to give effect to the proposals in accordance with the specification and plans; and it will be the duty of the authority to maintain the school when it is erected (i). [91]

The managers or governors of a voluntary school who propose to discontinue the school may not do so except after serving not less than two years' notice of their intention on the Minister and on the Local Education Authority and, if their school was established or altered with the help of grants from the Minister or from the Local Education Authority or a former authority, they may not serve notice that they propose to discontinue the school without leave of the Minister, who may require them to repay such portion of the grants as he thinks just. Once notice has been given it may not be withdrawn except with the consent of the Local Education Authority. If, while the notice is in force, the managers or governors inform the authority that they are unable or unwilling to carry on the school until the expiration of the notice, the authority may conduct the school as a county school during the unexpired period of the notice. During that time, the authority must keep the school in good repair, and the interest in the school premises will be deemed to be vested in the authority, but the managers or governors will be entitled to the use of the premises when not required for the purposes of the school to the same extent as they would if they had continued to carry on the school. When the period of the notice has expired the duty of the Local Education Authority to maintain the school will be extinguished. The two years' notice is needed in order that the Local Education Authority may, during that time, make provision for alternative school accommodation for the pupils attending the school it is proposed to discontinue, if such accommodation is necessary. It is important to remember that though proposals to establish or discontinue a school may be included in the Development Plan, and may be approved by the Minister in that Plan, that will not render it unnecessary to submit the proposals to the Minister and give public notice in the way just described. A Local Education Authority may not, without the leave of the Minister even undertake to establish or cease to maintain a school unless proposals are submitted to the Minister in this way (j). [92]

It may be convenient here to mention the power of a Local Education Authority, by means of an order confirmed by the Minister, to purchase compulsorily any land for a school or college which the authority propose to maintain. They may thus use this power not only for schools which they propose to establish, but also for voluntary schools, so long as no expenditure that should be borne by the managers or governors ultimately falls to be borne by the authority in the case of land purchased for a voluntary school. The provisions of the Local Government Act, 1933, with regard to the compulsory purchase of land will have effect in the case of purchases by a Local Education Authority, as if for references to the Minister of Health there were substituted references to the Minister of Education (k). [93]

(g) Second Schedule.
(h) See s. 10.
(i) S. 13 (6) (7) (8). This procedure as regards plans does not appear to be required in the case of a school transferred under s. 16 (1) as such a transfer is not regarded as the establishment of a new school, though, in fact, new buildings will be erected. It is probable, however, that the Minister will desire to approve such plans.
(j) S. 13 (5). (k) S. 90.

The alterations to be made to a school may include such improvements and enlargements as to amount to the establishment of a new school (l). In that case proposals will have to be submitted to the Minister, and public notice given, in the same manner as for an entirely new school. Whether or not, in any particular case, the alterations and enlargements are such as to be regarded as the establishment of a new school, is a matter to be determined by the Minister (m). Any buildings required for the purposes of any school or educational establishment are exempt from building byelaws if the plans have been approved by the Minister, and he so directs (n). [94]

(*d*) THE OBLIGATION TO RECEIVE EDUCATION

The obligation on parents to cause their children to receive education was first imposed in the Elementary Education Act, 1876 (a). This duty was continued with slight adaptation in the Education Act, 1921 (b), which stated that it was the duty of the parent of every child between the ages of five and fourteen to cause that child to receive efficient elementary instruction in reading, writing and arithmetic. It was also the duty of the Local Education Authority under that Act (c) to make and enforce bye-laws for their area requiring the parents of children between the age of five and not less than fourteen or more than fifteen, to cause them to attend school at such times as may be determined by the bye-laws, unless there was some reasonable excuse, which included the excuse that the child was under efficient instruction in some other manner (d). The maximum penalty which could be imposed was twenty shillings (including costs) or the child could be sent to an approved school if a school attendance order had been disobeyed (e). Separate provision was made for defective children, in respect of whom there was an obligation to receive suitable instruction up to the age of sixteen years in a special school or class within reach of his residence. The requirements for blind and deaf children differed slightly from those for defective and epileptic children (f). An attempt was made in the Education Act, 1936, to raise to fifteen years the age up to which children were required to attend school (g). This provision was to come into effect on the 1st September, 1939, but the outbreak of hostilities necessitated the postponement of the requirement, and in any case exemption was allowed to children who secured " beneficial " employment (h). [95]

Until the Education Act, 1944, the parent's duty was thus limited to securing the provision of efficient instruction for his child in reading, writing and arithmetic, though in fact a normal child of thirteen years should be expected to receive instruction in much else. The penalty, fixed when the general level of wages was much lower, was insufficient to deter some parents from failing in their duty, and, unless the parent of a child suffering from some physical or mental handicap was willing to co-operate with the Local Education Authority, it was difficult, if not impossible, to enforce the duty to provide suitable instruction for such a child. [96]

The duty of parents is now to cause their children of compulsory school age to receive efficient full time education suitable to their age, ability and aptitude either by regular attendance at school or otherwise (i). The term " parent " here includes a guardian and every person who has the actual custody of a child (j). Compulsory school age means any age between five

(l) S. 114 (1).
(m) S. 67 (4).
(n) S. 63.
(a) Elementary Education Act, 1876, s.
(b) S. 42 ; 7 Halsbury's Statutes 153.
(c) S. 46 ; 7 Halsbury's Statutes 155.
(d) S. 49 ; 7 Halsbury's Statutes 157.
(e) Ss. 45 & 46 (5) ; 7 Halsbury's Statutes 154, 156.
(f) See Section 4 of this Introduction, *post*.
(g) Education Act, 1936, s. 1 (1) ; 29 Halsbury's Statutes 118.
(h) *Ibid.*, s. 2 ; 29 Halsbury's Statutes 119.
(i) S. 36.
(j) S. 114 (1).

years and fifteen years, and for the purposes of the Act a person in attendance at a school or college who attains any age during the school term is deemed not to have attained that age until the end of the term (k). This provision comes into force on April 1, 1945, unless the Minister is satisfied that time is required to enable adequate provision to be made for a supply of teachers or of school accommodation, in which case he may order that instead of fifteen years, fourteen may be substituted in the definition of compulsory school age, though such an order will not be effective after April 1, 1947 (l). As soon as the Minister is satisfied that it has become practicable to raise to sixteen the upper limit of the compulsory school age, he will lay before Parliament a draft Order in Council directing that the upper limit of the compulsory school age should be raised to sixteen. Not until this is done can it be said that the various types of secondary education mentioned earlier in this Introduction (m) will be equal in quality. It was possible under previous enactments and regulations for children to remain in elementary schools up to the age of sixteen, and it will, of course, be possible, subject to any regulations which may be made by the Minister, for children voluntarily to stay at any type of secondary school presumably until the age of nineteen years if suitable courses of instruction are available for them. [97]

As regards children who suffer from serious disability of mind or body, and attend a special school, the Act provides that until the upper limit of the compulsory school age is raised to sixteen a child who is a registered pupil at a special school shall be deemed to be of compulsory school age until he attains the age of sixteen (n). A child, however, who is suffering from a disability of mind or body which is not serious, or for whom it is not practicable to provide special educational treatment in a special school, may be given such education in any school maintained or assisted by the Local Education Authority (o). In such a case there is no obligation on the parent to cause him to receive education until he is sixteen, as it would be undesirable to mark him out too prominently as different from his fellows in the school. [98]

To enforce the regular attendance of children at school there is now no longer any need for bye-laws. The proprietor of every school (including independent schools) must, in accordance with regulations to be made by the Minister, cause a register to be kept of all pupils at the school who are of compulsory school age (p), and if any child of compulsory school age who is a registered pupil at a school fails to attend regularly thereat, the parent of the child will be guilty of an offence (q). [99]

There are thus two duties imposed on parents, first, to cause their children to receive efficient education suitable to their age, ability and aptitude, and secondly, if they are registered pupils at a school, to cause them to attend regularly. In the first case, if it appears to the Local Education Authority that the parent is failing to perform the duty imposed on him, it is their duty to serve upon the parent a notice requiring him to satisfy them, before the date specified in the notice (which must not be less than fourteen days from the service of the notice), that the child is receiving efficient full time education suitable to his age, ability and aptitude either by regular attendance at school or otherwise (r). If the parent fails to satisfy the authority of this, then, if the authority is of opinion that the child should attend school, they must, if practicable, afford the parent an opportunity of selecting a school for the child. If he does not select a school, then the authority will serve on him an order, in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order. If he does select a school then that school must be named in the order, unless the Minister directs otherwise. If the Local

(k) S. 114 (5).
(l) S. 108 (3). The raising of the school-leaving age has been postponed by S.R. & O. 1944 No. 979.
(m) *See s. 3 (ii) (a), ante, pp. 21–22.*
(n) S. 38.
(o) S. 33 (2).
(p) S. 80.
(q) S. 39.
(r) S. 37.

Education Authority are of the opinion that the school selected by the parent is unsuitable to the age, ability and aptitude of the child, or that the attendance of the child at that school would involve the authority in unreasonable expense, they may after giving the parent notice, apply to the Minister for a direction as to which school should be named in the order. A school attendance order will remain in force, subject to any amendment which may be made by the Local Education Authority, so long as the child is of compulsory school age, unless it is revoked by the authority, or the parent is acquitted in proceedings for failure to comply with it and the court directs that the order shall cease to be in force, though the authority may make a new order if there is any change of circumstances. The parent may, at any time while the order is in force, make application to the authority by whom it was made requesting that another school be substituted for that named in the order, or that it be revoked on the ground that arrangements have been made for the child to receive efficient full time education suitable to his age, ability and aptitude, otherwise than at school. On such application the authority must comply with the request unless they are of opinion that the proposed change of school is unreasonable or inexpedient in the interests of the child or that satisfactory arrangements have not been made for the education of the child otherwise than at school. If the parent is aggrieved by a refusal of the authority to comply with his request, he has the right to refer the question to the Minister, who will give whatever direction he thinks fit (s). Failure to comply with the requirements of a school attendance order is an offence, unless the parent proves that he is causing the child to receive efficient full time education suitable to his age, ability and aptitude otherwise than at school. [100]

Action by means of a school attendance order would be taken by a Local Education Authority (i) in the case of a child not attending school and (ii) if the child is attending a school unsuitable to his age, ability and aptitude, for example a grammar school instead of a technical school, or a technical school instead of a special school if the medical officer has issued a certificate that the child is suffering from a serious disability of mind or body (t). The parent has the right of naming the school in the first instance and the authority has the duty of providing education in accordance with the parent's wishes (u) even to the extent of providing transport and paying the expenses of such transport (y) unless such expense would be unreasonable. This right and this duty is of special importance to safeguard, so far as is practicable, the parent's right to have his child educated in accordance with his religious opinions. But the parent's duty to cause his child to have suitable education, even in a school which does not normally provide religious instruction of the kind desired by the parent, is an overriding duty, though provision is made, so far as possible and in various ways, for the desired religious instruction to be given or for the child to be withdrawn from that given in the school (w). This duty may oblige the parent to allow his child to reside away from home, either in a boarding school or with another person, though here again, so far as is practicable, effect must be given to the wishes of the parent with regard to the religious denomination of the person with whom he will reside (x). Where, however, board and lodging is provided by a Local Education Authority on the ground that the pupil could not otherwise be provided with education suitable to his age, ability and aptitude, whether such board and lodging is provided at school (y) or not (z), then no charge may be made to the parent for the cost of such board and lodging. In extraordinary circumstances, and with the approval of the Minister, education suitable to the child may be provided otherwise than at school (a). These provisions will be of great importance in the case

(s) S. 37 (4).
(t) S. 34 (5).
(u) S. 76.
(v) S. 55.
(w) S. 25 (4) and see Section 3 (iv) of this Introduction.
(x) S. 50 (2).
(y) S. 61 (2) (*a*).
(z) S. 52 (1) (*a*).
(a) S. 56.

of children who require special educational treatment owing to some disability of body or mind, very many of whom have hitherto been deprived of suitable education through their parent's natural desire to keep them at home ; but in these cases especially, is it of importance for the parent to have the right of appeal to the Minister against a decision of the Local Education Authority. The final decision as to which school should provide education suitable to a child's age, ability and aptitude rests with the Minister, and if he gives a direction under section 37 (2), (3) or (4) of the Act as to which school shall be attended his decision is final, though he may vary or revise it (aa). If it is not obeyed the parent may be charged with the offence of non-compliance with the requirements of the school attendance order, and the only defence to this charge is that the child is receiving efficient full-time education suitable to his age, ability and aptitude otherwise than at school (b). It is not a defence that he is receiving it in another school not named in the order. Another point to be noticed is that the authority may decide or the Minister direct that the school named in the order should be an independent school, so that the force of the law may now be used to require a child to attend an independent school. [101]

The second duty of a parent is to secure that his child should attend regularly at the school at which he is registered (c). This duty is independent of the duty just discussed to comply with the directions in a school attendance order, and proceedings can be taken against a parent who fails to send his child regularly to the school at which he is registered, whether or not a school attendance order has been served upon him. Under the previous law " reasonable excuse " (d) was a defence to the charge of failure to carry out this duty. There is no such defence under the present Act ; but a child will not be deemed to have failed to attend regularly at school by reason of his absence with leave granted by any person authorised by the managers, governors or proprietor of the school ; nor if at any time he was prevented by sickness or any unavoidable cause, nor on a day exclusively set apart for religious observance by the religious body to which his parent belongs ; nor if the school at which the child is registered is not within walking distance of the child's home, and the Local Education Authority have not made suitable arrangements either for his transport to and from school, or for boarding accommodation at or near the school or for enabling him to become a registered pupil at a school nearer his home. The expression " walking distance " means two miles in the case of a child under the age of eight and three miles in the case of a child over that age, the distance to be measured by the nearest available route (e). It is worth noticing the change from the word " road " in the corresponding clause in the Education Act, 1921, to the word " route " in the present law. Under the old law it has been held that " road " was not confined to highways or to roads constructed for the purpose of carrying every class of traffic, and that it meant simply a route from the residence of the child to the nearest school (ee). The use of the word route now emphasises that this was the intention, and it would appear that any footpath, or any public or private way may be a " route " if in fact it is available for use ; *e.g.*, a track over the hills or practicable way over fields in the parent's occupation. The other important change in the law is that the distance of the home from the school will not be a defence in proceedings under this section if the Local Education Authority have provided suitable boarding accommodation at or near the school. If a child is a boarder at a school the child will be deemed to have failed to attend regularly if he is absent without leave (f) during any part of a school

(aa) S. 111. (b) S. 37 (5).
(c) S. 39 (1).
(d) As defined in the Education Act, 1921, s. 49 ; 7 Halsbury's Statutes 157.
(e) Education Act, 1944, s. 39.
(ee) *Hares v. Curtin* [1913] 2 K.B. 328 at p. 331 ; 19 Digest 568, *89*. This turned on the construction of bye-laws which used the word " road " in the same context as s. 49 (*b*) of the Education Act, 1921, 7 Halsbury's Statutes 157.
(f) This meets in particular the case of a weekly boarder.

term at a time when he was not prevented by sickness or any avoidable cause. If a child is provided with boarding accommodation near the school, the person who has the actual custody of the child will have the duty of securing his regular attendance at the school. [102]

If a child has no fixed abode the provison with regard to the distance of the school from his home does not, of course, apply. The special circumstances of such children have hitherto been met under the provisions of the Children and Young Persons Act, 1933 (g) and the Canal Boats Acts, 1877 and 1884, re-enacted by the Education Act, 1921 (h). Under the present law if the parent proves that he is engaged in any trade or business of such a nature as to require him to travel from place to place and that the child has attended at a school at which he was a registered pupil as regularly as the nature of the parent's trade or business permits, and in the case of a child over six has made not less than two hundred attendances during the previous twelve months, then the parent shall be acquitted. The provision of the Children and Young Persons Act that allowed the child to make the two hundred attendances during the months of October to March in cases brought during the months of April to September, has therefore been amended (i). If the child is in the company of a person who habitually wanders from place to place and the child is thereby prevented from receiving efficient full time education suitable to his age, ability and aptitude, that person will be liable to a fine of twenty shillings (j). The education of the child can be dealt with by means of a school attendance order or by proceedings to enforce the regular attendance of the child at school, or both these methods of enforcement may be employed. [103]

Any person found guilty either of failure to comply with an attendance order or of failure to secure the regular attendance of a child at the school at which he is registered will be liable, on summary conviction, in the case of a first offence to a fine not exceeding one pound, in the case of a second offence to a fine not exceeding five pounds and in the case of a third offence to a fine not exceeding ten pounds or to a term of imprisonment not exceeding one month or to both such a fine and such imprisonment (k). It is the duty of the Local Education Authority to institute proceedings for such offences whenever in their opinion it is necessary, and only a Local Education Authority may institute such proceedings. If a court before which such a case is brought is satisfied that the child has failed to attend school regularly then, whether or not the parent is convicted the court may direct that the child shall be brought before a juvenile court, and the juvenile court may make any order which it has power to make under section 62 of the Children and Young Persons Act, 1933 (kk), in the case of a child in need of care and protection. That is to say it may order the child to be sent to an approved school, commit him to the care of a fit person, order his parent to enter into recognisances to exercise proper care and guardianship or, without making any of the above orders, or in addition to either of the two last-mentioned orders, the court may place the child under the supervision of a probation officer for a period not exceeding three years. When a parent is prosecuted for failing to secure the regular attendance of his child at school, and the officer bringing the case on behalf of the Local Education Authority believes that the punishment of the parent would not be sufficient to secure the child's regular attendance, for example, because of his habitual truanting, it will be the officer's duty to apply to the court for a direction that the child be brought before the juvenile court. Any child brought in either of these ways before the juvenile court will be deemed to be a child in need of care

(g) S. 10; 26 Halsbury's Statutes 177.

(h) S. 50; 7 Halsbury's Statutes 158.

(i) Education Act, 1944, Eighth Schedule, Part I.

(j) Children and Young Persons Act, 1933, s. 10 (26 Halsbury's Statutes 177) as amended by Education Act, 1944, Eighth Schedule, Part I.

(k) Education Act, 1944, s. 40.

(kk) 26 Halsbury's Statutes 208.

and protection under section 62 of the Children and Young Persons Act, 1933, and the provisions of that Act will apply accordingly (l). [104]

The case of those children over the age of twelve who are licensed to perform on the stage should be mentioned here. Such licences are given subject to certain conditions described in the Children and Young Persons Act, 1933 (m). To these conditions is now added another (n) that the licence shall specify the times, if any, during which the child may be absent from school for the purpose authorised by the licence, and a child absent from school during those times will be deemed to be absent with leave. [105]

There are some further points worth noticing. Anyone who requires to prove the age of a child (or of any person) for the purposes of the Act may obtain a birth certificate upon payment of a fee of sixpence (o). It is now the duty of the Local Education Authority to enforce the regular attendance of registered pupils at independent schools, and to enable them to do this, the proprietor of such a school must, in accordance with regulations made by the Minister, keep registers of the pupils of the school and enable extracts from the registers to be taken by authorised persons, and to make to the Minister and to the Local Education Authority such periodical and other returns as may be prescribed (p). [106]

Hitherto it has been possible for the governors of a secondary school to expel a child who has been guilty of misconduct or indiscipline in the school. It is by no means clear whether they will still have this power, though they may still have the power to suspend the child from attending temporarily. The duty both of the authority and of the parents is to secure that every child of compulsory school age receives education suitable to his age, ability and aptitude. Assuming the facts to be such that a child should receive education in a grammar school, it is difficult to see how that child could be refused admission to a particular school solely on the grounds of his misconduct unless it is held, as it may be, that his misconduct has shown his lack of aptitude for the education provided in that particular grammar school. Possibly too it might be held that such a child would require special educational treatment. In any case it seems that a different procedure will have to be adopted in such circumstances than has been the case in the past. [107]

Duties of employers in regard to employment of children.—The employment of children is regulated mainly by Part II of the Children and Young Persons Act, 1933, and by bye-laws made thereunder. For the purposes of this Act and of any other enactment relating to the prohibition or regulation of the employment of children or young persons, any person who is not over compulsory school age is now deemed to be a child (q); and on the date when the upper limit of the compulsory school age becomes fifteen, no child may be employed until he has attained the age of thirteen instead of twelve as previously, and when the upper limit becomes sixteen no child may be employed until he is fourteen (r). If it appears to a Local Education Authority that any child who is a registered pupil at a county, voluntary or special school, is being employed in a manner prejudicial to his health or so as to render him unfit to obtain the full benefit of the education provided for him, the authority may prohibit the employer from employing the child or impose restrictions upon his employment (s) and they may require a parent or an employer to furnish them with information to enable them to ascertain whether a child is being employed in such a manner. There is no provision to enable an authority to prohibit or restrict the

(l) See s. 40 of the Education Act, 1944, and ss. 62 and 63 of the Children and Young Persons Act, 1933; 26 Halsbury's Statutes 208.
(m) S. 22; 26 Halsbury's Statutes 184.
(n) Education Act, 1944, Eighth Schedule, Part I.
(o) S. 94 (1).
(p) S. 80.
(q) S. 58.
(r) Children and Young Persons Act, 1933, s. 18; 26 Halsbury's Statutes 181, as amended by Education Act, 1944, Eighth Schedule, Part I.
(s) S. 59.

employment of a pupil who attends a secondary school if the pupil is over compulsory school age. It is probable that the authority can in such cases, however, impose conditions on the continued attendance of the pupil at school. [108]

(III) THE TRAINING AND REMUNERATION OF TEACHERS.

The appointment and dismissal of teachers by the Local Education Authority or by the managers or governors of the different types of school has been considered in the section of this Introduction dealing with the classification of schools (a) and suggestions as to the administrative arrangements that should be made in secondary schools are contained in the White Paper on Principles of Government in Maintained Secondary Schools (b). Simpler arrangements on similar lines might well be made also in the case of primary schools. The importance of the recruitment of well educated and trained teachers in a reformed educational system justifies, however, some further remarks on the effect of the Education Act, 1944, on the status, training and remuneration of the profession. The quality of the teachers appointed to the schools is without doubt of more importance than questions of organisation or buildings. All these are in fact concerned mainly to secure that the teachers are able to carry on their work in suitable conditions. [109]

Under the previous system, just as there were two main types of school, elementary and secondary, so there were two main types of teacher, with a different training, remuneration and status, employed in those schools. The *Grant Regulations for Secondary Schools* required merely that the teaching staff of a school must be suitable and sufficient in number and qualifications for providing adequate instruction in each subject of the curriculum. The teachers were paid, however, on scales laid down by the Burnham Committee (c) and recognised by the Board of Education, which distinguished between graduate and nongraduate teachers, many of the latter being teachers of special subjects such as Art and Manual Instruction whose qualifications were not equivalent to those of a graduate. The Code of Regulations of the Board of Education for Public Elementary Schools (d) required that head teachers must be certificated teachers, and assistant teachers must be certificated teachers, uncertificated teachers, teachers of special subjects or persons employed in accordance with Schedule II of the Regulations. Certificated teachers were persons who have completed an approved course in a Training College, or who have a university degree and have completed an approved course in the principles and practice of teaching or who have obtained a University Teaching Diploma. Uncertificated teachers were untrained teachers who have passed a School Leaving Certificate Examination, or who have a University degree. Teachers of special subjects, were those who have taken an approved course in *e.g.* domestic subjects or handicrafts, but who were not qualified as certificated teachers. Teachers employed in accordance with Schedule II of the Code were known as Supplementary teachers. These were suitable women over eighteen years of age who had been approved by H.M. Inspector for teaching children mainly under eight years of age in rural schools. All these teachers, too, were graded carefully for different scales of remuneration by the Burnham Committee. The anomalies resulting from these scales are too numerous to mention here, but perhaps the most glaring was the case of the untrained man graduate in the elementary school, who received in the provinces a minimum salary of either £102 or £108 per annum, according to the area, and a maximum of £156 or £174, but who, perhaps teaching children of the same age, in a grammar school received a minimum of £234 and a maximum of £480. Needless to say there were few untrained graduates in the elementary schools. [110]

(a) S. 3 (ii) (b), *ante*, pp. 23–32.
(b) Comd. 6523, see *ante*, pp. 34–39.
(c) Named after its first Chairman and representative of the Local Education Authorities and the various classes of teachers.
(d) S.R. & O. 1926 No. 856.

Now that all schools providing education for pupils under twelve years of age are to be regarded as primary, and all those providing education for pupils over that age are to be regarded as secondary, these distinctions can no longer apply. To deal with this situation the Minister has appointed a new Burnham Committee to consist of twenty-six representatives of the authorities (County Councils Association 9; Association of Municipal Corporations 6, Association of Education Committees 6, L.C.C. 3, Welsh Federation of Education Committees 2), and 26 representatives of the teachers (National Union of Teachers 16, Incorporated Association of Headmasters 1, Incorporated Association of Headmistresses 1, Incorporated Association of Assistant Masters 2, Incorporated Association of Assistant Mistresses 2, Association of Teachers in Technical Institutions 4). A Technical Committee has also been appointed to deal with the salaries of teachers in technical, including commercial and art, colleges and schools. This Committee is now given a statutory position, for the Minister is required (e) to secure that one or more Committees shall be set up, consisting of persons appointed by bodies representing Local Education Authorities and teachers respectively, whose duty will be to submit to the Minister, whenever they think fit or whenever he may require, such scales of remuneration for teachers as they consider suitable. When a scale so submitted is approved by the Minister he may by order make provision to secure that the salaries paid by the authorities are in accordance with that scale. It is hoped that this new Committee will suggest new scales to the Minister before 1st April, 1945, when the new classification of schools begins to operate. [111]

The reform in the law of education brought about by the Education Act, 1944, inevitably requires a great increase in the number of teachers. The new classification of schools as primary and secondary, the raising of the age of compulsory school attendance to fifteen and ultimately sixteen years, the provision of nursery schools, the establishment of county colleges and the promised reduction in the size of classes, will demand, it is estimated, the services of from 50,000 to 90,000 teachers in addition to the 200,000 employed in all types of schools before the war. A committee under the chairmanship of Sir Arnold McNair was appointed by the President of the Board of Education to make recommendations to deal with the problem of the Supply, Recruitment and Training of Teachers and Youth Leaders. The Board of Education have also prepared a scheme for the Emergency Recruitment and Training of Teachers to deal with the immediate difficulties after the war, by setting up Emergency One Year Training Centres for men and women demobilised from the Forces or released from other forms of national service who desire to enter the teaching profession (f). The McNair Committee point out that the supply of teachers is inevitably linked with the status and conditions of service of the profession, and they have made many important recommendations. Among these may be mentioned the need for teachers to be recruited from all types of secondary school and not only from the grammar school, for the recruitment of teachers from among men and women of maturer years and the abolition of the ban on married women imposed by many Local Education Authorities. The last point has already been met in the Education Act, 1944 (g), which provides that no woman shall be disqualified for employment as a teacher in any county or voluntary school or be dismissed from such employment by reason only of marriage. The Act also gives power to Local Education Authorities to grant scholarships and other allowances to pupils over compulsory school age who are undergoing training as teachers (h). Such assistance may be given not only to pupils who have just left a secondary school but also to

(e) S. 89.
(f) See the Report on the Supply, Recruitment and Training of Teachers and Youth Leaders (April 1944) (the McNair Report), which deals primarily with long term policy, and the Board of Education Circular 1652 (15.5.44), which deals with short term policy.
(g) S. 24 (3).
(h) S. 81 (c).

those of maturer age. The Minister may also aid such pupils or training institutions by the powers conferred in s. 100. As regards the conditions of service of teachers, the McNair Committee point out that the improvement of the amenities in school buildings and the reduction of the size of classes would make teaching more attractive, and that the participation of teachers in public affairs should be encouraged. In this connection the advantage of appointing teachers as members of education committees should be considered. Teachers are not disqualified from being members of an education committee merely because they hold office in a school maintained by the Local Education Authority appointing the committee (i). They are also able to serve on a Divisional Executive, and to be elected on any county, borough or urban or rural district council unless they are employed by the council of that county or borough. Thus teachers who were employed by a borough or urban district council which was a former education authority and were elected members of the county council, will now be disqualified for membership of that council, though they may serve on the borough or urban district council that formerly employed them. [112]

The recommendations of the McNair Committee with regard to the remuneration of teachers are that the salaries paid should be substantially increased, that there should be a basic scale for qualified teachers, with additions for special qualifications and experience, that posts of Deputy Head with a suitable salary should be established in large schools, and that the Minister should recognise only one grade of teacher, viz., the " qualified " teacher, who should be a teacher who has satisfactorily completed an approved course of education and training. They recommend that a Central Training Council should be established charged with the bringing into being of an area training service. Alternative schemes are suggested for this area training service. The first scheme is recommended by those members of the committee who take the view that the universities have a duty, in a national educational service, to undertake greater responsibilities for the education and training of the teachers. They therefore wish to see University Schools of Education established, to consist of an organic federation of approved training institutions working in co-operation with other approved educational institutions such as technical colleges and schools of art and music. These University Schools of Education would be responsible for the training and assessment of the work of all students wishing to be recognised as qualified teachers. The other scheme is recommended by those members of the McNair Committee who do not think it practicable or desirable for the universities to accept responsibility for the training of all teachers. They fear the concentration of new training colleges upon the university towns, that the universities would emphasise a too academic outlook in the teachers, and that there would be an excessive preponderance of intending teachers in the universities. They therefore recommend a development in the use of the existing Joint Boards consisting of representatives of the universities, training colleges and Local Education Authorities, who are responsible for the examination which the Board of Education recognised for the purpose of the teaching certificate. They suggest that these Joint Boards should be reconstituted and become responsible for the organisation of an area training service, in which the university training departments (for the training of graduates) and the training colleges would preserve their identity, but various arrangements would be made for mutual co-operation and assistance. All the members of the committee agree, however, that the training course should be lengthened from two years to three years, that suitably qualified persons other than graduates should be eligible for a one year course of training, and that others should be given courses of varied duration suitable to their attainments and experience. [113]

It is the duty of the Minister to make such arrangements as he considers

(i) Local Government Act, 1933, s. 94 ; 26 Halsbury's Statutes 356.

expedient for securing that there shall be available sufficient facilities for the training of teachers for service in schools, colleges and other establishments maintained by Local Education Authorities, and for that purpose he may give to any Local Education Authority such directions as he thinks necessary, requiring them to establish, maintain or assist any training college or other institution, or to provide or to assist the provision of any other facilities, and he may require other Local Education Authorities to contribute towards the expenses incurred (j). [114]

The devotion of many teachers to the needs of their pupils has broadened the conception of their function in the schools. Few teachers now regard their duty as ending in the class-room, and it is generally accepted among them that they have a responsibility for the whole physical, mental and spiritual development of the children in their care. They have thus organised games and sports for them and taken them to camps and on educational visits to museums, art galleries, concerts and theatres. They have also been foremost in encouraging the provision of meals in schools. It was recognised, however, in the Education Act, 1921, that it should not be regarded as an obligation on them to supervise or assist in the provision of school meals (k), and though regulations made by the Minister will now impose a duty on Local Education Authorities to provide milk, meals and other refreshments for pupils at schools, and these regulations will make provision for the services to be rendered by the managers, governors and teachers with respect to such meals, they may not impose upon the teachers duties on days on which the school is not open for instruction, or duties other than the supervision of pupils (l). [115]

(IV.) RELIGIOUS EDUCATION

Until 1870 the vast majority of schools in this country had been provided by religious bodies, though after 1833 financial assistance was given by the State to such organisations as the National Society acting for the Church of England, and the British and Foreign Schools Society acting mainly for the Free Churches. Roman Catholic schools, too, were eligible for assistance after 1847. In the "British" Schools undenominational religious instruction was given, but in the other schools the religious instruction was naturally in accordance with the doctrines of the body providing the school. When it was decided that the State should itself provide schools to fill the gaps still remaining, it was laid down that in such schools no religious catechism or religious formulary which is distinctive of any particular denomination should be taught (a). There were thus two main types of elementary school, the one, provided by a religious body in which religious instruction was given in accordance with the trust deed relating to the school (b), the other, provided by the State, in which no denominational instruction could be given and in which there was no obligation for religious instruction to be given at all, though there must have been very few cases where it was not provided. This position continued almost unaltered until the Education Act, 1944. In choosing a school for his child a parent at the same time chose the type of religious instruction to be given to him. In fact, however, there was frequently very little choice of school for a parent, and if he objected to his child receiving the type of religious instruction given at the school, he was allowed to withdraw him from that instruction (c), but unless the Local Education Authority, by adopting the "Anson" bye-law, so allowed, he could not be withdrawn from the school during the times in

(j) S. 62.
(k) Education Act, 1921, s. 85; 7 Halsbury's Statutes 176.
(l) Education Act, 1944, s. 49.
(a) Elementary Education Act, 1870, s. 14 (2) (the "Cowper-Temple" Clause) re-enacted by the Education Act, 1921, s. 28 (2); 7 Halsbury's Statutes 143.
(b) Education Act, 1921, s. 29 (5) (c) (this clause is often referred to as the "Kenyon-Slaney Clause"); 7 Halsbury's Statutes 145.
(c) *Ibid.*, s. 27 (1) (a); 7 Halsbury's Statutes 142.

which the religious instruction was given. It was also forbidden to require that any child should attend or abstain from attending any Sunday School or place of religious worship, and, to make the withdrawal easier for parents, religious instruction could only be given either at the beginning or at the end of a school session. [116]

A move in the direction of giving a parent more practical freedom in his choice as to the religious instruction to be given to his child, was made by the Education Act, 1936. There it was provided that if parents of children attending a school giving denominational instruction desired them to receive undenominational instruction, and they could not with reasonable convenience cause them to attend a school provided by a Local Education Authority, instruction in accordance with a syllabus in use in such provided schools was to be given in the denominational school (d). The corresponding right was not given, however, to parents of children attending a council school, for their children to be given denominational instruction at that school, though they were allowed, if they desired their children to receive religious instruction of a kind not given in the school, whether that school was provided by a Local Education Authority or by a religious body, to withdraw them from the school during the time allotted to religious instruction if arrangements had been made for them to attend religious observance or instruction elsewhere (e). [117]

In secondary schools, the Local Education Authority could not require any particular form of religious instruction distinctive of any particular denomination to be taught in a school aided but not provided by them (f). Many such schools were endowed by religious bodies or persons, and religious instruction was given in accordance with the trust deed or other instruments regulating the conduct of the school. In schools provided by a Local Education Authority, no pupil could be excluded or placed in an inferior position on the ground of his religious belief, and no catechism or formulary distinctive of any particular denomination could be taught, unless the parents of scholars so requested, and then it could not be taught at the expense of the authority. This latter provision was in fact rarely used. Finally, no scholar in any secondary school or other institution for higher education was to be required to attend or abstain from attending any Sunday School or place of religious worship or instruction in religious subjects, and the times for religious worship or lessons were to be conveniently arranged for the purpose of allowing the withdrawal of scholars therefrom (g). [118]

Under the new law religious instruction is given a more definite place in all schools, the tendency observed in the Education Act, 1936, to enable a parent to exercise more real powers of choice as to the religious instruction to be given to his child, is taken a further step, but at the same time the previous safeguards are retained, by permitting the withdrawal of any child from any religious instruction or observance. The changes in the law have been made necessary by the new requirement that children should be given education suited to their age, ability and aptitude. The various types of education could not be duplicated in schools of all denominations, and now that the managers of a denominational school will be required to allow their school to be organised for junior or senior pupils only, it was essential to make other arrangements for pupils to receive religious instruction of a kind not given at the school they attend. [119]

The Education Act, 1944, contains an entirely new provision that in all schools, both county and voluntary, the school day must begin with collective worship (h) on the part of all pupils at the school. Unless the Local Education Authority, or in the case of a voluntary school the managers

(d) Education Act, 1936, s. 12; 29 Halsbury's Statutes 127.
(e) *Ibid.*, s. 13; 29 Halsbury's Statutes 127.
(f) Education Act, 1921, s. 72 (1); 7 Halsbury's Statutes 169.
(g) *Ibid.*, s. 72 (2), (3), (4).
(h) This need not be Christian. It may be, for example, in appropriate cases—Jewish.

or governors, consider that the school premises are such as to make it impracticable to assemble them, arrangements must be made for a single act of worship attended by all the pupils (i). Religious instruction, also, must now be given in every county and voluntary school (j), but no pupil may be required to attend or abstain from attending any Sunday school or any place of religious worship, and if the parent of any pupil requests that he be excused from attendance at religious worship or instruction in the school, then the pupil must be excused from such attendance. If the parent of a pupil at any school who has been excused from attendance at religious worship or instruction, desires him to receive religious instruction of a kind not provided at the school, and the pupil cannot with reasonable convenience be sent to another county or voluntary school where such instruction is provided, the pupil may be withdrawn from the school to receive the instruction during school hours elsewhere, but only if the Local Education Authority are satisfied that this will not interfere with his attendance at school except at the beginning or end of the school session (k). A Local Education Authority may not give directions as to the secular instruction to be given to pupils at a voluntary school, so as to interfere with the provision of reasonable facilities for religious instruction during school hours. The foregoing provisions apply to all schools whether county or voluntary. Special provision is made to meet the different circumstances and histories of county, controlled, aided and special agreement schools. [120]

In county schools neither the act of worship nor the religious instruction may be distinctive of any particular denomination, and the religious instruction must be given in accordance with an agreed syllabus (l) drawn up by a conference, convened by the Local Education Authority, consisting of four committees representative of the religious denominations which the authority consider ought to be represented, of the Church of England (except in Wales), of such associations representing teachers as in the opinion of the authority ought to be represented and of the authority itself. The conference must make a unanimous recommendation as to an agreed syllabus to be adopted by the authority, failing which the Minister must appoint a similarly representative body of persons experienced in religious instruction to prepare a syllabus instead (m). Some former authorities, notably Cambridgeshire, the West Riding of Yorkshire and Surrey, have prepared syllabuses of religious instruction in a similar way, for use in their elementary schools, and these syllabuses have been adopted by many other authorities. They are not, however, appropriate for use in grammar schools nor for the older pupils in other types of school now that the leaving age is to be raised to fifteen. The preparation of a good syllabus will take a considerable time. Provision is therefore made to allow a syllabus which had been adopted by a former authority to continue in use until a new syllabus has been adopted in accordance with the statutory procedure, though not for a period longer than two years (mm). If the school is a county secondary school, situated, for example, in the open country, it may be impossible to find suitable premises elsewhere for those parents who desire to withdraw their children from the religious instruction given in the school, in order that they may receive instruction in accordance with the tenets of a particular denomination. In such cases, if the Local Education Authority are satisfied that satisfactory arrangements have been made for the provision of denominational instruction in the school, and that the cost will not fall on the authority, they must provide facilities for this purpose, unless they are of the opinion that there are special circumstances which would make it unreasonable to do so (n). Thus the " right of entry " to council schools, so frequently denied to the clergy, has now been granted in certain cases. [121]

In controlled schools there is nothing to prevent the collective act of worship from being distinctive of the denomination which originally provided

(i) S. 25 (1).
(j) S. 25 (2).
(k) S. 25 (5).
(l) S. 26.
(m) Fifth Schedule.
(mm) S. 114 (4).
(n) S. 26, proviso.

the school, but the religious instruction must be in accordance with the agreed syllabus adopted by the authority (o), unless the parents of any pupils in attendance request that they may receive religious instruction in accordance with the provisions of the trust deed or the previous practice in the school. In that case the foundation managers, unless they are satisfied that it would be unreasonable to do so, must make arrangements for the denominational instruction to be provided during not more than two periods a week (p). In order that this may be possible, the Local Education Authority must, if the number of the teaching staff exceeds two, appoint reserved teachers as to whose fitness and competence to give the required religious instruction the foundation managers or governors are satisfied (q). If it is not possible to appoint any reserved teachers owing to the limitations imposed by the Act, the foundation managers or governors still have the duty of arranging for the instruction required, but it may be given by anyone acceptable to them. [122]

In aided or special agreement schools the religious instruction given is under the control of the managers or governors, and must be in accordance with the provisions of the trust deed or the practice observed in the school before it became a voluntary school (r). If, however, the parents of any of the pupils desire them to receive religious instruction in accordance with an agreed syllabus, and they cannot with reasonable convenience cause them to attend a school at which that syllabus is in use, then the managers or governors must make arrangements for such instruction to be given during the times set apart for religious instruction, unless the authority consider it would be unreasonable to do so. If the managers or governors are unwilling to make such arrangements then the authority themselves must make the arrangements. [123]

It will be noted that in cases where parents require religious instruction of a kind not given at the school attended by their children, the question arises as to the reasonable convenience of the children attending another school where the required instruction is given. In this connection the possibility of the provision of transport under s. 53 must be considered. Assurances have been given to the various denominations that the Minister, in considering the proposals of a Local Education Authority in their Development Plan as regards transport, would have regard to the desirability of arrangements being made to facilitate the attendance of children at schools where religious instruction of a kind desired by the parents was given. Local Education Authorities must have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents (s). [124]

As regards special schools, the regulations made by the Minister as to their conduct must secure that, so far as is practicable, every pupil in attendance at such schools will attend religious worship and religious instruction or will be withdrawn from attendance at such worship or instruction in accordance with the wishes of his parent (t). If a Local Education Authority consider that education suitable to a child can best be given at a particular school, or that a young person should be in continuous attendance at a county college and it is therefore necessary that he should be provided with boarding accommodation, otherwise than at the school or college, they must arrange, so far as is practicable, to give effect to the wishes of the parent of the child, or to the wishes of the young person (not his parent) as the case may be, with respect to the religious denomination of the person

(o) S. 27 (6).
(p) S. 27 (1).
(q) S. 27 (2). Fuller details are given in s. 3 (ii) (*b*) of this Introduction under the heading "Controlled Schools", *ante*.
(r) S. 28 (1). In a special agreement school the religious instruction will be given by reserved teachers, the number of whom will be specified in the agreement.
(s) S. 76.
(t) S. 33 (4)

with whom he will reside (u). No other provision is made requiring religious worship or religious instruction at county colleges or at other educational institutions for further education (v). This does not mean that it may not be provided, but if it is, it will presumably be undenominational in character. As regards pupils in boarding schools, if a parent wishes his child to attend worship in accordance with the tenets of a particular religious denomination on a day exclusively set apart for religious observance, or to receive denominational religious instruction outside school hours, the managers or governors must afford reasonable opportunities for this, though not so as to entail expenditure by the Local Education Authority (vv). [125]

Religious instruction in accordance with an agreed syllabus, given in any school maintained by a Local Education Authority, may only be inspected by one of His Majesty's inspectors or by a person ordinarily employed to inspect secular instruction either by the Minister or by the authority. Religious instruction in a voluntary school, other than that in accordance with an agreed syllabus, may be inspected under arrangements made by the managers or governors of the school. In controlled schools such arrangements may be made only by the foundation managers. Inspections so arranged by the managers or governors may not be held on more than two days in a year, and fourteen days notice of them must be given to the Local Education Authority (w). [126]

The provision of religious instruction obviously depends on a supply of teachers able and willing to give it. It has been announced in the White Paper of July, 1943 (x), that it is proposed to include religious instruction among the subjects which qualify for a pass in the Training College Certificate examination. Except for teachers employed in aided schools and reserved teachers in controlled or special agreement schools who may not be penalised because of the fact that they give religious instruction or because of their religious opinions or because of their attending religious worship, no person may be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in a county or voluntary school, or from being otherwise employed for the purposes of such a school (e.g., as a caretaker), and no teacher may be required to give religious instruction or be penalised in any way because he does or does not give religious instruction, or by reason of his religious opinions, or of his attending or omitting to attend religious worship (y). There can be no doubt as to the wisdom of these safeguards as to the position of teachers, not only from the point of view of the teachers, but also from the point of view of the quality of the religious instruction given. All must agree that if religious instruction is to be of any worth it must be given by teachers who are willing and eager to give it. [127]

The question of religious instruction in schools has probably been the cause of more controversy than any other subject connected with education. The restraint shown by all the parties on whose agreement the successful passage of the Education Act, 1944, depended, is a hopeful sign for the future. The continuation of that restraint in the interests both of the children and of true religion, will be more than ever necessary during the next few years when the Act is put into effect. The appointment by the Local Education Authorities of a standing advisory council on religious education, will be of great assistance in securing the co-operation of all concerned. Such advisory councils may be constituted (z) to advise the

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(u) S. 50 (2).
(v) But, except when continuous attendance is required by a college attendance notice, no young person may be required to attend a county college on a Sunday, or on a day or part of a day exclusively set apart for religious observance by the religious body to which he belongs.
(vv) S. 25 (7).
(w) S. 77 (5).
(x) Cmd. 6458, para. 41.
(y) S. 30.
(z) S. 29 (2).

authority upon matters connected with religious instruction to be given in accordance with an agreed syllabus, and, in particular, as to methods of teaching, the choice of books, and the provision of lectures for teachers. In considering this matter the Local Education Authority must have regard to any unanimous recommendations of a conference convened under the provisions of the Fifth Schedule. [128]

(V.) FURTHER EDUCATION

Local Education Authorities for higher education had previously the power, after consultation with the Board of Education, to supply or aid the supply of higher education (a). It was this power which enabled them to establish, maintain or aid institutions providing any form of education other than elementary, whether in secondary schools, technical and art schools, universities or adult education classes. This power is now converted into a duty, not only to secure the provision of secondary schools as has been already mentioned, but also to secure the provision of facilities for further education, as the third of the progressive stages in which the statutory system of public education is to be organised. Further education is defined in the Education Act, 1944 (b), as (i) full-time and part-time education for persons over compulsory school age and (ii) leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose. It will be remembered that secondary education is education provided for senior pupils who may be up to nineteen years of age, but that the definition of secondary education (c) excludes full-time education which may be provided in pursuance of a scheme for further education, so that any education provided for persons over compulsory school age, otherwise than in a secondary school, is regarded as further education. There are three distinct ways in which further education may be provided; part-time education in county colleges, full-time and part-time education provided in other ways, particularly in Technical and Art Colleges, and what may generally be classified as adult education, but including the cultural and recreative facilities provided for young people in their leisure time. The duty of the Local Education Authority is to provide adequate facilities for their area in all these ways, but they have no power or duty after the transitional period (d), to secure the provision of such facilities except in accordance with schemes of further education approved by the Minister or at county colleges (e). [129]

County Colleges.—In 1938, according to the report of the Board of Education for that year, 570,790 children left the public elementary schools in England and Wales. Of these only about 115,000 continued their education in any formal way. The remainder were "left without the supervision and help that they need during the most critical years in the formation of character and the training of mind and body" (f). "From the point of view of the country's manufacturing industry, agriculture and commerce, the training afforded by a system of part-time education in conjunction with employment is long overdue" (g). The need for "continuing the education of young persons and helping them to prepare for the freedom and responsibilities of adult life" (h) was recognised in the Education Act, 1918, and re-enacted in the Education Act, 1921 (i) and provision was then made for the compulsory attendance of young people between the

(a) Education Act, 1921, s. 70 (1); 7 Halsbury's Statutes 168.
(b) S. 41.
(c) S. 8 (1) (b).
(d) See s. 7 of this Introduction.
(e) Education Act, 1944, s. 41.
(f) Cmd. 6458, para. 64.
(g) *Ibid.*, para. 66.
(h) Education Bill, 1918, Clause 3 (1). These words were, however, omitted from the Act.
(i) Education Act, 1921, ss. 75–79; 7 Halsbury's Statutes 170–173.

ages of fourteen and eighteen years of age in Day Continuation Schools for 320 hours a year, as from an appointed day. For various reasons these provisions never operated in more than a few areas, and only in Rugby have they continued to this day as regards young persons up to the age of sixteen. In other areas where Day Continuation Schools have been established, attendance is voluntary, or only made compulsory by the firms employing the pupils. [130]

It is to be hoped that the experience gained by the failure to implement these provisions of the Education Act, 1921, will give guidance in the operation of the similar clauses in the Education Act, 1944. On and after a date to be fixed by Order in Council not more than three years after Part II of the Act comes into force (j) or after the date on which the upper limit of the compulsory school age is raised to fifteen, if that is later than April 1, 1945 (k), it will be the duty of every Local Education Authority to establish county colleges, that is to say centres approved by the Minister for providing for young persons who are not in full-time attendance at any school or other educational institution such further education, including physical, practical and vocational training, as will enable them to develop their various aptitudes and capacities and will prepare them for the responsibilities of citizenship (l). The latest date, therefore, by which Local Education Authorities will be charged with this duty is April 1, 1950, but it may be very much sooner. In order that preparations may be made, the Minister is required, as soon as he considers it practicable to do so, to direct every Local Education Authority to estimate the immediate and prospective needs of their area from this point of view, and to prepare and submit to him, within the time and in such form as may be specified in the direction, a plan showing the provision the authority propose to make for such colleges in their area. After considering the plan in consultation with the authority, the Minister will make an order specifying the county colleges which it will be the duty of the authority to maintain. The order may require the authority to make provision for boarding accommodation if the Minister thinks it expedient, to provide, for example, for the special circumstances of young people in rural areas. If there is any change in the circumstances, the Minister may amend the order, after consultation with the Local Education Authority. He may also make regulations as to the maintenance, government and conduct of county colleges and as to the further education to be given in them. [131]

As soon as practicable after the date of the Order in Council, that is to say when the county colleges have been established, the Minister may give a further order directing the Local Education Authority to serve on every person residing in their area over compulsory school age who has not attained the age of eighteen years (m) and who is not exempted, a " college attendance notice " directing him to attend at a county college. It will be the duty of every young person who is served with such a notice to attend the county college named in it in accordance with the requirements specified (n). Normally the requirements will be that he attends either for one whole day or for two half days in each of forty-four weeks in a year, though if the authority think that continuous attendance would be more suitable in a particular case they may require him to attend for one period of eight weeks or for two periods of four weeks. In exceptional circumstances, such as the nature of the young person's employment, the authority may, with the young person's consent, require him to attend in accordance with other arrangements, so long as in the aggregate he attends for three hundred and thirty hours in a year. Except where continuous attendance is required, no young person may be required to attend a county

(j) S. 43 (1).
(k) S. 108 (3).
(l) S. 43 (1).
(m) See definition of " young person " in s. 114 of the Act.
(n) S. 44 (2).

college on a Sunday or on any day exclusively set apart for religious observance by the religious body to which he belongs, or during any holiday to which he is entitled by law or agreement; nor may he be required to attend between the hours of six in the evening and half-past eight in the morning, unless, in the case of young persons employed at night or at abnormal times, the Minister directs, on the application of a Local Education Authority, that other times may be specified in the notice. In determining the requirements in the notice as to the place, days, times, and periods of attendance, the Local Education Authority must have regard, so far as is practicable, to any preference which the young person may express, or if he is under sixteen which his parent may express. They must also have regard to the circumstances of his employment and to any representations made to them by his employer. If the young person is engaged in any employment where there is a legal limitation of the number of hours during which he may be employed, otherwise than by overtime, then any time he spends at a county college in accordance with the requirements of a college attendance notice, will be regarded as time during which he was employed. If the young person is entitled to receive overtime pay for work in excess of, or at other times than, certain specified hours, then the time he is required to spend at a county college will be regarded as time employed within the specified hours (o). No fees may be charged at any county college, unless board and lodging are provided. If so, the charges to be made must not exceed the scales determined by the Minister, and if suitable education could not be provided for the young person except by providing him with boarding accommodation, then no fees shall be charged, and if the authority are satisfied that the full fees for the board and lodging would cause financial hardship they may remit the whole or any part of the fees. Such fees are to be paid by the parent unless the authority are of the opinion that the young person's financial circumstances are such that he ought to pay them himself (p). The Local Education Authority may also provide any young person at a county college with suitable articles of clothing for physical training at the college (q). [132]

Any young person will be exempt from compulsory attendance for *further education if he is in full-time attendance at a school or other educa*tional institution, or if he has satisfied the authority that he is receiving suitable full time instruction or part-time instruction amounting to not less than 330 hours in a period of twelve months, for example, in a continuation school in a works or in a technical college or school of art. Similarly a young person who is undergoing a course of training for the mercantile marine or the sea-fishing industry, or who is engaged in the mercantile marine or the sea-fishing industry will be exempt from attendance, as is also, of course, a young person to whom the duties of Local Education Authorities do not relate, such as a lunatic or mental defective or person detained in pursuance of a court order (r). Any person (not necessarily the young person himself) who is aggrieved by a decision of a Local Education Authority as to the suitability or otherwise of the full-time or part-time instruction which might be regarded as giving exemption from attendance at a county college, may refer the question to the Minister for his decision. If a young person fails to comply with the requirements of a college attendance notice he will be guilty of an offence, unless he was exempt, or was prevented from complying with the requirements owing to sickness or any unavoidable cause, or the requirement did not comply with the provisions of the Education Act, and he will be liable on summary conviction to a fine not exceeding one pound for a first offence, five pounds for a second offence, and ten pounds or one month's imprisonment or both for a third offence (s). [133]

(o) S. 60 (p) S. 61 (2) (3). (q) S. 53 (3). (r) Ss. 44 (8) and 116.

(s) S. 46 (1). But see ss. 52 and 54 of the Children and Young Persons Act, 1933, 26 Halsbury's Statutes 203, 204, on the substitution of custody in a remand home in the case of young persons.

In order to assist Local Education Authorities in carrying out their duties, every young person who is not exempt from compulsory attendance, will be required to keep the authority in whose area he resides informed of his proper address, and any person employing a young person who is not exempt, unless the employment is casual, will also be required to notify the authority when the young person enters or leaves his employment and of any change in his own address and, if known to him, in the address of the young person (t). Arrangements will be made by regulations for consultation and the exchange of information between different Local Education Authorities, and instructions will be issued to Local Education Authorities and the local officer of the Ministry of Labour for ensuring due consultation and exchange of information between them. If any person, furnishing information for the purposes of the Act, makes a false statement, knowingly or recklessly, he will be liable on conviction to a fine not exceeding twenty pounds or three month's imprisonment or both fine and imprisonment. Similar penalties may be incurred by a parent or employer who has connived at an offence committed by a young person against the requirements of the Act relating to compulsory attendance for further education. [134]

Though the Act provides penalties to compel attendance at county colleges, if it is necessary to make use of such penalties too frequently to enforce young persons unwillingly to the colleges, the attempt to provide them with continued further education will have failed. The nature of the education to be provided in the colleges and still more the best method of teaching, should be evolved by experiment. It should not be a mere imitation of classroom techniques. But there are certain points on which there can be no doubt, viz. that provision should be made for the health and physical development of the pupils; that they should have experience in expressing themselves in writing and in speech and in comprehending others; that they should learn how to live in a community whether it be that of the home, the club, the shop or factory, the town or the nation, and that they should have the opportunity of experiencing the enlargement of their sympathies through the arts. Above all they must learn that education does not stop at school, but continues through life. If this is to be achieved the county colleges must not be regarded as a continuation of school, but as the start of the adventure of adult life. [135]

Under the provisions of the Unemployment Insurance Act, 1935 (u), any person who is between the minimum age for entry into insurance and the age of eighteen years and is capable of and available for work, but has no work or only part-time or intermittent work could be required by the Minister of Labour to attend, in accordance with regulations, at any authorised course at which he could reasonably attend, and Education Authorities for higher education were required to provide suitable courses of instruction for such unemployed juveniles (v). From the date on which s. 44 of the Education Act, 1944, comes into force certain sections of the Unemployment Insurance Act, 1935, are repealed or amended (w). It will then be the duty of the Minister of Education to require the attendance of unemployed juveniles at authorised courses, which term will include a county college, or a training course provided by the Minister of Labour (x). The Minister of Education will make regulations, relating to the attendance of unemployed young persons, which will provide for the functions to be performed by Local Education Authorities, and, in particular, will direct them to make such modification as may be provided by the regulations, and will make provision as to the circumstances in which, and the extent to which

(t) S. 45 (1).

(u) S. 78; 28 Halsbury's Statutes 547.

(v) S. 76; 28 Halsbury's Statutes 546.

(w) Ss. 120, 121, Sched. 8, Pt. II, and Sched. 9, Pt. II.

(x) Unemployment Insurance Act, 1935, ss. 77 and 113, 28 Halsbury's Statutes 547, 566, as amended by ss. 120, 121 and Scheds. 8 and 9 of the Education Act, 1944.

a requirement to attend an authorised course may be reckoned as attendances in pursuance of college attendance notices. [136]

Technical education.—The provision for technical, commercial and art education in this country has hitherto been made largely as a result of the demand of numerous individual students to obtain further qualifications to improve their positions in their employment, rather than as a result of the demand of industry and commerce for trained personnel. Because of this, by far the greater part of the provision has been made in evening classes, though employers in some areas are willing to release their employees for one or two days a week to receive instruction at the technical college (a). Though the system has produced many students of marked capacity, the strain of attendance, after a day's work, at a technical college on three evenings a week has meant that only the strongest personalities could survive. [137]

At the 200 or so major technical institutions in the country, courses of varying types are offered in engineering, building, mining, science, commercial subjects and other subjects related to the industries in the area where they are located. The types of course include trade or workshop courses, courses leading to national certificates and the associateships of the different professional institutions and to university degrees. Such courses in the larger colleges meet the needs of students over a considerable area. It is essential if a sufficient variety of courses of a high standard is to be available, without waste of effort and overlapping, that a co-ordinated policy should be adopted for all the institutions in a region. Some attempt has been made towards the recognition of certain colleges as regional colleges served by a number of satellite colleges, and many Local Education Authorities have co-operated to establish joint governing bodies to control the institutions in the region, but the process has not yet been carried far enough. The Minister now has the power, already referred to (b) to establish Joint Education Committees, and it is expected that this power will be used especially for the purposes of technical education. The need for the work of technical colleges to be closely related to that of universities has also led the Minister to set up a departmental committee under the chairmanship of Lord Eustace Percy with the following terms of reference: "Having regard to the requirements of industry to consider the needs of higher technological education in England and Wales and the respective contributions to be made thereto by universities and technical colleges and to make recommendations, among other things, as to the means for maintaining appropriate collaboration between the universities and technical colleges in this field". It is equally important for technical education to be responsive to the needs of industry both nationally and in each locality. It is becoming more common now for advisory committees to be established in connection with technical colleges, consisting of representatives of industry and of the Local Education Authority to advise on the provision made in the college. This practice should be universal. In many of the colleges the buildings and equipment, owing to their expense, are obsolete and inadequate. Before the war the government contemplated spending £12,000,000 to bring them up-to-date. Even this sum is far from enough if each college is to give the service that industry will certainly demand of it after the war. In addition there is a strong case for the establishment in this country of one or two really important colleges of the standard of Charlottenburg and the Massachusetts Institute of Technology. Presumably this question will be considered by the Departmental Committee referred to above. Such colleges cannot be established by any Local Education Authority by itself, or even in co-operation with others, without exceptional assistance from national funds, the universities and industry. [138]

(a) In 1938 only 41,539 out of 2,000,000 young employees were so released.
(b) See s. 3 (i) (*b*) of this Introduction, *ante*, p. 12.

Adult education.—It will probably take many years before the reforms required by the Education Act, 1944, in the system of primary and secondary education are fully operating. In the meantime many children will become adults without having benefited from those reforms. Much will depend, during the next twenty years, on the sound judgment and capacity of our population. It is therefore no less essential for them than it is for children, to be provided with facilities to develop their abilities and aptitudes. Life in the services and in industry during the war has caused much questioning, and the new methods of education adopted by the Army Bureau of Current Affairs and the Council for the Encouragement of Music and the Arts have plainly met a real and widespread demand. But whatever reforms may be made in the system of primary and secondary education, there is much in literature, music, history, philosophy and economics which can never be made comprehensible to children. If these things are not to be reserved for the few whose career involves education at a university, other opportunities must be available for the many to enable them to become acquainted with the greatest developments of western and other civilisations. In education supply creates demand, and the better the school system becomes, the greater will be the demand for facilities for further education for adults. [139]

Much has been done already by voluntary organisations such as the Workers' Educational Association, by the Universities, and by the Local Education Authorities. For adolescents, similarly, provision has been made by voluntary organisations such as the national associations of boys' and girls' clubs, by the churches, and especially during the war by the pre-service corps and the Local Education Authorities. What has been done, however, has revealed the size of the field remaining to be covered, and especially the lack of physical accommodation available. Halls for large meetings, small rooms for groups, community centres, residential colleges, concert and exhibition halls are rare even in the largest cities, and completely lacking in many districts. Some of these needs should be met by the Local Education Authorities, others by voluntary organisations assisted by the authorities and by the Minister. Whatever provision is made, it is essential in a democracy that attendance should be voluntary for those over compulsory school age. The Education Act states clearly that the facilities for the leisure time occupation in such organised cultural training and recreative activities as are suited to their capacities should be available only for those persons who are able and *willing* to profit by them (c). [140]

Particulars of the provision which a Local Education Authority propose to make, both for technical (or commercial or art) education, and for the leisure time occupations of persons over compulsory school age, must be submitted to the Minister at such times and in such form as he may direct (d). After making any modifications in the scheme proposed, after consultation with the authority, the Minister may approve it. It will then be the duty of the authority to take such measures as the Minister may direct to give effect to the scheme, which may be modified, supplemented or replaced by a further scheme, or the Minister may revoke the scheme or any part of it. When preparing their scheme the Local Education Authority must have regard to any facilities for further education provided for their area by any other bodies such as universities and educational associations; such bodies and adjacent Local Education Authorities must be consulted by the authority, and the scheme may include such provisions as to the co-operation of any such bodies and the authority as may have been agreed between them. Until a scheme of further education has first been approved by the Minister, the authority, unless the Minister otherwise directs, must maintain or assist any school or other educational institution other than secondary schools which they, or the council of any county district, maintained or assisted before April 1, 1945, under the powers conferred by s. 70 of the Education

(c) S. 41. (d) S. 42.

Act, 1921 (dd). They may also provide, with the approval of the Minister, such additional facilities for further education, other than county colleges, as appear to them to be expedient for meeting the needs of their area (e). [141]

A Local Education Authority has the duty of providing adequate facilities for recreation and social and physical training not only in connection with primary and secondary education, but also for further education. For that purpose they may, with the approval of the Minister, establish, maintain and manage or assist the establishment or maintenance and management of camps, playing fields and other places (including gymnasiums and swimming baths) for the persons for whom the further education is provided (f). In doing so they must have regard to the expediency of co-operating with any voluntary bodies whose objects include the provision of facilities of a similar character. Though the National Fitness Council, set up under the Physical Training and Recreation Act, 1937 (ff), has been abolished, it will still be possible for the Minister to make grants to aid the establishment of facilities for social and physical recreation for adults not otherwise connected with further education. Such free transport may be provided as the authority think expedient or the Minister may direct to enable pupils to attend county colleges or classes provided in accordance with a scheme of further education, or they may pay the reasonable travelling expenses of the pupils (g). The authority may, in accordance with regulations made by the Minister, grant scholarships, exhibitions, bursaries and other allowances in respect of pupils over compulsory school age (h). With the approval of the Minister, a Local Education Authority may make such provision for the conducting, or assisting the conduct of research as appears to them to be desirable for the purpose of improving the educational facilities provided for their area (i) and they may, with the consent of the Minister, provide financial assistance to any university or university college for the purpose of improving the facilities for further education available for their area (j). Such are the powers and duties of a Local Education Authority with regard to further education. Only by the most extensive use of these powers will they discharge their general duty to contribute towards the spiritual, moral, mental and physical development of the community (k). [142]

4. MEDICAL AND OTHER SPECIAL SERVICES

The power to provide meals for school children was given to Local Education Authorities even before they were charged with the duty of arranging for the medical inspection of children. The former power was given to them by the Education (Provision of Meals) Act, 1906. The object of this Act was to enable Local Education Authorities to assist voluntary organisations in feeding necessitous children, and the cost of meals provided had to be recovered unless the parents were unable to pay, on the ground that there might be children attending the public elementary schools who were unable by reason of lack of food to take full advantage of the education provided for them (a). As re-enacted in the Education Act, 1921 (b), however, a distinction was made between the provision of meals for children in need and for those who, for example, live at a distance from the school, but can pay for the meal. The duty of a Local Education Authority to provide for the medical inspection of children and the power to attend to the health and physical condition of children educated in public elementary schools was first given statutory force in the Education (Administrative Provisions) Act,

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(dd) 7 Halsbury's Statutes 168.
(e) S. 47.
(f) S. 53 (1).
(ff) 30 Halsbury's Statutes 712.
(g) S. 55.
(h) S. 81 (c).
(i) S. 82.
(j) S. 84.
(k) S. 7.
(a) Education (Provision of Meals) Act, 1906, s. 3.
(b) Ss. 82–84; 7 Halsbury's Statutes 175–176.

1907 (c). As re-enacted in the Education Act, 1921 (d) the Local Education Authority had the duty of providing for both the inspection and the treatment of children attending elementary schools, but as regards secondary schools, though they had the duty of arranging for medical inspections, the treatment of the children was optional. The services actually provided in the secondary schools, therefore, varied considerably in the areas of different authorities, and even for elementary school children treatment might be available for certain defects in one area and not in another. In both types of school the Local Education Authority had to recover the cost of treatment unless they were satisfied that the parents could not pay. [143]

The provision of meals, clothing, etc.—The general duty of a Local Education Authority under the Education Act, 1944, requires them to contribute towards the physical as well as the spiritual, moral and mental development of the community. Looked at in this way, their duty is not merely that of arranging for medical inspection and for the treatment of the defects found, though this is, of course, essential, but rather, as far as their powers extend, to create the conditions for healthy growth in the schools, and, by means of the education given, to encourage healthy living in the pupils. From this point of view their duty will be discharged, first, by the provision of school buildings that are light, well ventilated and heated, spacious and clean, and in which as much attention has been paid to the sanitary accommodation as to the classrooms and laboratories. Gymnasiums and swimming baths, adequate playground space and playing fields will also be provided, and probably a school camp in the country or near the sea (e). [144]

Secondly, they will carry out the duty imposed on them by regulations made by the Minister, to provide milk, meals and other refreshments for the pupils in attendance at schools and county colleges maintained by them (f). The recognition of this duty by the Local Education Authorities and the Government during the war has led to a considerable expansion in the service, but much of the provision has been necessarily as economical of building materials and labour as possible. Thus when new schools are built and other opportunities occur, separate dining halls should, if possible, be provided at almost every school. The manner in which and the persons by whom the expense of providing such meals is to be defrayed, the facilities to be afforded, including buildings and equipment, and the services to be rendered by managers, governors and teachers will be laid down in the regulations, though the duties imposed on teachers must be limited to the supervision of the pupils, and the managers or governors of an auxiliary school may not be required to incur any expenditure. As will be seen later with regard to other aspects of the provision to be made for the health of pupils, the Local Education Authority, with the consent of the proprietor of any school in their area, which is not maintained by them, upon such financial terms, if any, as may be agreed between them and the proprietor, may make arrangements for securing the provision of milk, meals and other refreshment for pupils in attendance at the school, provided that the financial terms so agreed, shall so far as practicable, secure that the expense incurred by the authority does not exceed the cost of the service of a similar meal if the pupils had been in attendance at a school maintained by them (g). [145]

Thirdly, Local Education Authorities have now the power, long demanded by many former authorities, to provide children with clothing. Where it appears to them that a registered pupil at any school maintained by them is unable by reason of the inadequacy of his clothing to take full advantage of the education provided at the school, they may provide him

(c) S. 13.
(d) Ss. 80 and 81 ; 7 Halsbury's Statutes 174, 175.
(e) Education Act, 1944, s. 53 (1).
(f) S. 49.
(g) S. 78 (2) (*a*) and proviso.

with such clothing (h) as is necessary to ensure that he is sufficiently clad (i). They must, however, require the parent to pay for the clothing such amounts, not exceeding the cost of the clothing to the authority, as in their opinion he is able to pay without financial hardship (j). They may also make similar arrangements with the proprietor of a school not maintained by them to provide clothing to pupils at that school (k). [146]

The power to ensure cleanliness.—A Local Education Authority has also the power to secure that the persons or clothing of any pupil in attendance at a school or county college maintained by them are not infested with vermin or in a foul condition. They may for this purpose, authorise a medical officer to cause examinations of the persons and clothing of pupils in attendance at any or all of the schools maintained by them, whenever in his opinion such examinations are necessary in the interests of cleanliness; and if he has reasonable cause to suspect it is necessary in the case of any pupil at a county college, he may cause that pupil to be examined (l). The examination will be made by a person authorised by the authority, and if the person or clothing of a pupil is found to be infested with vermin or in a foul condition, any officer of the authority may serve on the parent of the pupil, or if the pupil attends a county college, on the pupil himself, a notice requiring him to cause the person and clothing of the pupil to be cleansed within the time stated on the notice, not being less than twenty-four hours, otherwise the cleansing will be carried out by the authority. If an order is made by a medical officer or if the cleansing is requested by a parent, it is the duty of the authority to secure that the cleansing is carried out at suitable premises by suitable persons with suitable appliances, and the Local Education Authority may require the council of any county district in their area who are entitled to the use of any such premises or appliances, to permit the education authority to use them on such terms as may be agreed or determined, in default of agreement, by the Minister of Health. An order by a medical officer will be sufficient to authorise any officer of the authority to convey the pupil to the suitable premises, detain him there and cause his person and clothing to be cleansed. After the cleansing has been carried out, if the person or clothing of the pupil is again, owing to neglect, found to be infested with vermin or in a foul condition at any time while he is in attendance at a school maintained by a Local Education Authority or at a county college, the parent, or the pupil himself if he attends a county college, will be liable on summary conviction to a fine not exceeding twenty shillings. If a medical officer suspects that the person or clothing of a pupil is verminous or in a foul condition, but action for the examination or cleansing cannot be taken immediately, he may, if he considers it necessary, either in the interests of the pupil or of the other pupils, direct that the pupil be excluded from attendance until such action is taken. Such a direction will be a defence in proceedings for failure to cause the pupil to attend school or college as the case may be, unless it is proved that the exclusion was necessitated by the wilful default of the pupil or his parent. No girl may be examined or cleansed except by a qualified medical practitioner or by a woman authorised for that purpose by a Local Education Authority. [147]

Medical inspection and treatment.—A routine medical inspection of children in attendance at public elementary schools was usually carried out soon after the admission of the child to school at the age of five, again at about the age of eight and a third time at the age of twelve or before the child left school. In addition, special inspections of any children suspected of suffering from any defect were made as often as required. The treatment given covered defects in the sight or hearing of the child, defects in the ear,

(h) S. 114 (1). This term includes boots and other footwear.
(i) S. 51.
(j) S. 52.
(k) S. 78 (2) (*b*).
(l) S. 54 (1).

nose and throat, skin diseases and diseases of the heart and lungs. Attention was paid to the teeth, orthopaedic treatment provided and speech defects dealt with as far as possible. All these defects were not provided for in the schemes made by all Local Education Authorities but the service was rapidly expanding in all areas during the years before the war. Parents were expected to contribute towards the cost of the treatment provided according to their ability. It is now the duty of every Local Education Authority to provide for the medical inspection, at appropriate intervals, of pupils in attendance at any school or county college maintained by them, and they have the power to provide for the inspection of senior pupils at any other educational establishment maintained by them (m). For this purpose, they may require any pupil to be submitted to a medical inspection, and any person who fails, without reasonable excuse, to comply with any such requirement will be liable on conviction to a fine not exceeding five pounds. It is also their duty to make such arrangements as are necessary for securing the provision of free medical treatment for pupils at any school or county college maintained by them in order that comprehensive facilities for free medical treatment may be available to the pupils either under the Education Act or otherwise, for example under arrangements made by the Government such as those outlined in the White Paper on a National Health Policy (n). They have power also to make similar arrangements for senior pupils at other educational establishments maintained by them. Medical treatment is defined as including treatment by any duly qualified medical practitioner or registered dentist, but does not include treatment in a pupil's home, except in the case of a pupil receiving primary or secondary education otherwise than at school under arrangements made by a Local Education Authority (o). It is the duty of every Local Education Authority to encourage and assist pupils to take advantage of the facilities for free medical treatment, unless a parent gives notice to the authority that he objects to his child availing himself of the treatment provided (p). The managers or governors of any voluntary school may be required by a Local Education Authority to provide reasonable facilities to enable the authority to carry out their duties in this matter, but the managers or governors may not be required to incur any expenditure for the purpose. A Local Education Authority may also with the consent of the proprietor of any school or other educational establishment not maintained by them, upon such financial and other terms, if any, as may be agreed between them, make arrangements for the medical inspection and treatment of junior or senior pupils at that school or establishment (q) ; and if a Local Education Authority have made special arrangements for any child or young person to receive education otherwise than at school, they may provide for his medical inspection and treatment as if he were in attendance at a school maintained by the authority (r). [148]

Every Local Education Authority must furnish such particulars of their arrangements for medical inspection and treatment as may be required by the Minister of Health, or, if arrangements are so made, by the Minister of Education, and the Minister may give directions to the authority as to the

(m) S. 48 (1). There is no definition of the term " educational establishment " other than that in s. 77 (1) where the definition applies only to that section. There it includes any establishment used under a scheme for further education and any training college or other institution maintained by a Local Education Authority.

(n) Cmd. 6502 states that the conception underlying both the Act and the White Paper is that the education authorities will retain as part of their educational machinery the function of inspection of children in the school group, together with the important function of using the influence of the school and the teacher and the whole school relationship with child and parent to encourage the recourse of the child to all desirable medical treatment. But, as from the time when the new health service is able to take over its comprehensive care of health, the child will look for its treatment to the organisation which that service provides—and the education authority, as such, will give up responsibility for medical treatment.

(o) S. 114 (1).

(p) S. 48 (4).

(q) S. 78 (2).

(r) S. 78 (1).

discharge of their functions (s). The Minister may make regulations as to the conduct of medical examinations and inspections for the purposes of the Act, and the regulations may provide for any class of examinations or inspections to be made by qualified medical practitioners having such special qualifications or experience as may be prescribed, or by a practitioner selected with the approval of the Minister (t). [149]

Special educational treatment.—Under Part V of the Education Act, 1921 (u), the parent of a blind or deaf child of school age had the duty of causing such a child to receive efficient and "suitable" instruction, and the Local Education Authority was required to provide the suitable instruction. The parent of a defective or epileptic child over seven years of age had the duty of sending the child to a special school or class "within reach" of the child's residence. The child could not be sent to a special school or class that was not within reach without the consent of the parent, unless the consent was unreasonably withheld, and the withholding of consent could not be regarded as unreasonable, if it was done with the bona fide intention of benefiting the child (v). It will be seen that it was not easy to arrange for suitable instruction for defective children if the parent's consent was withheld, as it is impossible of course to provide such instruction within reach of every child needing it. As a result there are large numbers of defective children, especially those defective in mind, to be found in the ordinary schools where it is almost impossible to give them the attention needed. Much has been done by arranging special classes for them, but the size of the classes is frequently too large, and suitable books and apparatus are not available. [150]

The number of children in special schools dealing with defects of all types was about 50,000 before the war. The places available for blind and deaf children were probably about sufficient, but the schools were badly distributed about the country and many were in need of modern premises. Additional accommodation is, however, needed for crippled children, for rheumatic and delicate children, and especially for the mentally defective both in day and residential schools. Many more day open-air schools are also needed to which children can go for a shorter period than is necessary for those with more permanent defects. Children who are maladjusted in relation to their environment and become "problem" children, or appear before the Juvenile Court also need special provision, though no arrangements were made for them under the 1921 Act. All these difficulties can be dealt with under the Education Act, 1944. [151]

In fulfilling their duty to secure that there are available sufficient schools offering such variety of instruction and training as may be desirable in view of the different ages, abilities and aptitudes of the pupils, a Local Education Authority must have regard to the need for securing that provision is made for pupils who suffer from any disability of mind or body by providing, either in special schools or otherwise, special educational treatment, that is to say education by special methods appropriate for persons suffering from that disability (w). In their Development Plan, the authority must give particulars of the arrangements made and proposed to be made for meeting the needs of pupils who require special educational treatment (x). In making arrangements as regards special schools, the requirement that the authority must have regard to the need for securing that primary and secondary education are provided in separate schools does not apply (y), though the separation of older from younger children may be very desirable

(s) S. 79.
(t) S. 69 (1).
(u) S. 51 as amended by the Education (Deaf Children) Act, 1937; 7 Halsbury's Statutes 159; 30 Halsbury's Statutes 179.
(v) S. 54 (1); 7 Halsbury's Statutes 160.
(w) S. 8 (2) (*a*).
(x) S. 11 (2) (*e*).
(y) S. 8 (2), proviso.

in many particular cases. The several categories of pupils requiring special educational treatment will be defined by the Minister in regulations, which will also make provision as to the special methods appropriate for the education of pupils of each category (z). As far as possible a Local Education Authority must arrange for the special educational treatment of pupils whose disability is serious in special schools, but where this is impracticable or the disability is not serious, the arrangements may provide for the education to be given in any school maintained or assisted by the authority, for example in special classes. The Minister may, by regulations, lay down the requirements to be observed by a special school as a condition of approval, and may impose requirements as to the organisation of the school as a primary or secondary school even though this is not required by the Act. The regulations must secure that so far as is practicable, every pupil in attendance at a special school will attend, or be withdrawn from, religious worship and religious instruction according to the wishes of his parent (a). [152]

Every Local Education Authority must ascertain what children in their area require special educational treatment. They may, therefore, authorise any of their officers to serve notice in writing on the parent of any child who has attained the age of two years requiring him to submit the child for examination by a medical officer of the authority, to obtain his advice as to whether the child is suffering from any disability of mind or body and as to its nature and extent. If a parent refuses to comply with such a notice without reasonable excuse, he will be liable on conviction to a fine up to five pounds (b). The parent of any child over two years of age may himself ask the authority to arrange for the child to be medically examined, and the authority must comply with this request unless they think it unreasonable. In either case the parent will be entitled to be present at the medical examination. After considering the advice of a medical officer as a result of the medical examination and any reports from teachers or other persons as to the child's ability and aptitude, if the authority decide that the child needs special educational treatment, they must give notice to the parent of their decision and provide the treatment. A medical officer's advice in this matter must be communicated to the parent and to the authority and if the parent or the authority require it, the medical officer will issue to them both a certificate in the prescribed form showing whether the child is suffering from any disability requiring special educational treatment, and if so its nature and extent, but the authority may not require a certificate unless it is necessary to secure the attendance of the child at a special school. Any certificate issued in this way may be cancelled by the Minister, who has power to arrange for the child to be medically examined himself (c), or by the medical officer of the authority. If a certificate is so cancelled, the authority must cease to provide special educational treatment for the child and notify the parents accordingly. This procedure obviates the necessity under the previous law to require the formal certification of a child as physically or mentally defective before special educational treatment could be provided, and provides for the needs of defective children below the age of seven years. [153]

Though the upper limit of compulsory school age for ordinary children will be fifteen years for some time, the compulsory school age for children who are registered pupils at a special school will nevertheless extend to sixteen (d) and there is nothing to prevent a pupil from remaining at a special school after that age if the parent and the authority so desire. Once a child has become a registered pupil at a special school under arrangements

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(z) S. 33 (1). It is believed that this is the first occasion that provision has been made for regulations as to educational " method ". Hitherto only " suggestions " have been made.
(a) S. 33 (4).
(b) S. 34 (1).
(c) Ss. 34 and 65.
(d) S. 38 (1).

made by a Local Education Authority, he may not be withdrawn without the consent of that authority, though the parent may appeal to the Minister if he is aggrieved at their decision. The Minister may not direct that the child should attend or continue to attend a special school, unless there is in force a certificate issued by a medical officer of the Local Education Authority showing that the child is suffering from a disability of such a nature and extent as to make it expedient, in the opinion of the Minister, that the child should attend a special school. [154]

In order that children may take advantage of any educational facilities available without hardship to themselves or their parents the Minister will make regulations empowering Local Education Authorities to defray such expenses of children attending special schools (or a maintained school) as may be necessary to enable them to take part in any school activities (e). The authority may provide boarding accommodation either at a boarding school (f) or otherwise than at a boarding school (g) but in neither case may a charge be made on the parent in respect of such boarding accommodation if it is provided on the ground that education suitable to the pupil's age, ability and aptitude could not otherwise be provided (h). If there are extraordinary circumstances the authority may make, with the approval of the Minister, special arrangements for a child to receive education otherwise than at school (i). If it appears to the Local Education Authority that any child in their area over the age of two, is suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education at school, it is their duty to require the parent of the child to submit him for medical examination (j). If, after considering the advice of the medical officer and reports or information they are able to obtain from teachers or other persons, the authority decide that the child's disability is such as to make him incapable of receiving education at school, it will be their duty to issue a report to that effect to the Local Authority for the purposes of the Mental Deficiency Act, 1913; but before doing so they must give not less than fourteen days notice of their intention to the parent who may refer the question to the Minister. If the question is referred to the Minister no report may be issued except by direction of the Minister. A child must be regarded as incapable of receiving education at a school, not only if his disability prevents his receiving education, but also if it makes it inexpedient for him to be educated in association with other children either in his own interests or in theirs (k). If a Local Education Authority are satisfied that a child is suffering from a disability of mind to such an extent that he will require supervision after leaving school, they must issue a report to that effect to the Mental Deficiency Authority and to the parent before the child ceases to be of compulsory school age. Any report issued to a Mental Deficiency Authority must be accompanied by the information prescribed. [155]

Many special schools have been provided by voluntary associations for the care of persons suffering from special defects. Local Education Authorities have the power to assist special schools established by such bodies (l) and the Minister may make grants to them to assist them in establishing or maintaining special schools (m). It is to be expected that when the Minister receives the Development Plans from the Local Education Authorities he will note where there are gaps and inadequacies in the provision of special schools, and by means of Local Education Orders and by assistance to the voluntary bodies, he will ensure that sufficient schools will be available for special educational treatment in all parts of the country. In discharging his duties in this matter, it has been announced that he will receive the aid

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(e) S. 81 (1) (*a*).
(f) S. 61 (2).
(g) S. 50 (1).
(h) S. 52 (1) and s. 61 (2).
(i) S. 56.
(j) S. 57 (1).
(k) S. 57 (4).
(l) S. 9 (1).
(m) S. 100 (1) (*b*).

of an Advisory Committee which is to be appointed to make recommendations relating to the needs of children who require special educational treatment (n). [156]

5. INDEPENDENT SCHOOLS

In the report of the Departmental Committee on private schools and other schools not in receipt of grants from public funds (1932) it was estimated that there were about 10,000 independent schools, with probably 400,000 pupils of all ages. The average size of an independent school was thus forty, but a considerable number of them was very much larger than this, so that many of them had even less than ten pupils. The schools classified in this way, solely on the criterion that they receive no aid from public funds and are subject to no public control, include some of the most important schools in the country, the major " Public " schools, and some of the worst, with defects such as those described to the Committee by one witness as having " unsuitable rooms, furniture and equipment, poor ventilation, antiquated methods of teaching and difficult teaching problems owing to wide age range ". The White Paper of July, 1943 (a), remarked that while the State does not claim a monopoly in the conduct of education, it cannot divest itself of all responsibility for those children whose parents prefer to have them educated in schools outside the public system, and such parents are entitled to have some assurance that the independent schools of their choice are sufficiently well found and staffed to fulfil the educational purposes which they purport to do. [157]

The registration and inspection of private schools was considered as long ago as 1861 by the Newcastle Commission, and has been suggested on various occasions since, but no attempt was made to place any obligation on the proprietors of such schools until the Education Bill of 1918, though an opportunity was provided for the voluntary inspection of independent secondary schools by the Secondary School Grant Regulations in 1906. These regulations enabled any such school which reached generally the standard of a grant aided secondary school to apply for recognition by the Board of Education as an efficient secondary school (b). In all, about 1,300 schools had, in 1932, been inspected for various purposes by the Board of Education and of these 611 were recognised as efficient. In addition about 1,000 had been inspected by a Local Education Authority. [158]

The law of school attendance as defined by the Education Act, 1918, and re-enacted in 1921, imposed the duty on a parent to cause his child to receive efficient elementary instruction in reading, writing and arithmetic. Local Education Authorities had, however, no right of entry to a private school in order to satisfy themselves that the children attending there were being efficiently instructed. Their only course of action in any case of doubt, was to prosecute the parents for failing to carry out their duty. If they did so, it was not a defence to such proceedings that the child was attending a school providing efficient elementary instruction unless the school was open to inspection, either by the Local Education Authority or by the Board of Education, and unless satisfactory registers were kept of the attendance of the scholars (c). The onus of proving the efficiency of the instruction given was thus placed on the parent, and the decision made by the magistrates. The procedure was, however, so cumbersome and success so doubtful, that Local Education Authorities rarely resorted to it except in the most flagrant cases. Another provision of the Education Act, 1921 (d), required the person responsible for a school to supply the Board of Education with certain information on the first opening of a school

(n) 399 H. of C. Official Report 1812.
(a) Cmd. 6458.
(b) List 60 published by the Board of Education includes the independent schools recognised by the Board as efficient.
(c) Education Act, 1921, s. 147 ; 7 Halsbury's Statutes 204.
(d) S. 155 ; 7 Halsbury's Statutes 207.

and with such particulars as may be prescribed. Information as to new schools was supplied to the Board, but regulations were not made requiring the information to be supplied periodically. The information was thus not kept up-to-date and this provision of the Act has never operated. [159]

The report on private schools already referred to made a number of recommendations concerning the registration and inspection of independent schools, and with regard to power being given to close those which were found not to attain certain minimum standards. These recommendations, with some modification, have now been adopted by the Education Act, 1944 (e), though the part of the Act in which they are contained does not come into force until such date after 1st April, 1945, as His Majesty may direct by Order in Council (f), as it will be necessary to recruit inspectors to carry out the duties laid on the Minister. When this part of the Act comes into operation it will be the duty of the Minister to appoint one of his officers to be Registrar of Independent Schools to keep a register of all independent schools (g), whose proprietors make application in the prescribed manner (h). Six months after the commencement of this part of the Act it will be an offence to conduct an independent school which is not registered or provisionally registered, or for the proprietor of a provisionally registered school to do any act calculated to lead to the belief that the school is a registered school. The penalty for such an offence will be a fine not exceeding twenty pounds, or in the case of a second or subsequent offence a fine not exceeding fifty pounds or up to three months' imprisonment or both. The Minister may make regulations prescribing the particulars to be furnished to the Registrar by the proprietor (i) for the notification of any changes in the particulars, and as to the circumstances in which the Minister may order the name of the school to be deleted from the register if the Registrar is unable to obtain sufficient particulars. Independent schools must be open to inspection at all reasonable times, and until the school has been inspected on behalf of the Minister (j) and notice has been given to the proprietor that the registration is final, the registration of a school will be regarded as provisional. No independent school may be registered if the proprietor is disqualified, or if the school premises are used for any purpose for which they are disqualified. If the Minister is satisfied that he is in possession of sufficient information with respect to any independent school or class of independent schools (k) and that registration is unnecessary, he may exempt such schools from registration but the schools will be deemed to be registered. [160]

If at any time the Minister is satisfied that any registered or provisionally registered school is objectionable upon any of the following grounds: that the school premises or any part of them are unsuitable for a school, that the accommodation is unsuitable to the number, age or sex of the pupils, that efficient and suitable instruction is not being provided or that the proprietor or any teacher employed in the school is not a proper person, then the Minister will serve on the proprietor a notice of complaint setting out full particulars of the matters complained of (l). Unless the matters complained

(e) Part III.
(f) S. 119.
(g) By s. 114 (1) an independent school is any school at which full-time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age) not being a school maintained by a Local Education Authority or a school in respect of which grants are made by the Minister. Thus e.g. " approved " schools controlled by the Home Office may be regarded as independent schools for the purposes of this Act.
(h) S. 70 (1).
(i) This term means the person or body of persons responsible or proposing to be responsible for the management of a school, s. 114 (1).
(j) The Minister has the duty under s. 77 to cause an inspection to be made of any educational establishment, including independent schools, at such intervals as appear to him to be appropriate and for this purpose inspectors may be appointed by His Majesty on the recommendation of the Minister. Penalties may be imposed on persons obstructing an inspector in the execution of his duty.
(k) For example, schools controlled by another Government Department.
(l) S. 71 (1).

of are, in the opinion of the Minister, irremediable, the notice will specify the measures necessary to remedy them and the time, not being less than six months after the service of the notice, within which the measures specified must be taken. If it is alleged in the notice of complaint that a teacher is not a proper person to be employed in the school, that teacher must be named in the notice and a copy of it served on him. [161]

Any person upon whom a notice or copy of a notice of complaint has been served, within the time limit stated in the notice, being not less than one month after the service of the notice, may appeal, in the manner laid down by rules, to an Independent Schools Tribunal (m), consisting of two impartial persons from an "educational panel" to be appointed by the Lord President of the Council and an impartial chairman from a "legal panel" to be appointed by the Lord Chancellor (n). The Independent Schools Tribunal will have power, after hearing all the evidence, to order that the complaint be annulled or that the school be struck off the register, or that it be struck off unless the requirements, subject to any modifications, are complied with, to disqualify the premises or any part of them for use as a school, or for pupils exceeding such a number or of such an age or sex as may be specified, or disqualify a proprietor or teacher complained of from being a proprietor or teacher. If the complaint is not referred to an Independent Schools Tribunal within the time limit, the Minister will have power to make any order that the Tribunal could have made. The penalties to enforce any orders made by the Minister or by an Independent Schools Tribunal are defined in s. 73. Anyone may apply to the Minister to remove a disqualification owing to a change of circumstances, and if he is aggrieved by the refusal of the Minister to remove the disqualification, he may appeal to the Independent Schools Tribunal (o). [162]

6. EDUCATIONAL FINANCE

The education service is responsible for the growth of individuals, for the transmission of the cultural inheritance of the nation and for the progress of ideas. For this reason it should not be controlled solely by the central authority, which may at any time desire to impose a particular view of human nature, of culture or of progress, in accordance with the ideas of the government of the day. On the other hand educational facilities should be equally available to all citizens, no matter in what part of the country they may live, and some uniformity of physical standards is desirable. The administration of education is thus a partnership, in which both local authorities and the central authority have different but essential functions. If the whole financial burden of the partnership is borne by either the local authorities or by the government, then instead of a partnership, a master-servant relationship will inevitably appear. The principle that each of the partners should bear a proportion of the cost of education has been long established. Difficulty has, however, been experienced in devising a suitable grant formula which satisfactorily takes account of the needs of the different authorities, as shown, for example, in the proportion of children to the total population and the need for new buildings, and at the same time has regard for their ability to contribute towards the costs of the partnership as shown, for example, by their rateable value per head of the population and the incidence of unemployment. [163]

The existing grant formula for elementary education (a), though it includes a block grant which takes into account the number of children in average attendance and the product of a 1d. rate, is mainly a percentage grant varying from 60 per cent. of the expenditure on teachers' salaries to 20 per cent. for administration and other expenditure. Until the National

(m) S. 72.
(n) Sixth Schedule.
(o) S. 74.
(a) See *Encyclopedia Local Government Law and Administration Volume 5.*

Economy Order, 1931 (b), if the grant due to an authority was less than half the total expenditure, then the deficiency was made up by grant (c). As a result of the order abolishing the deficiency grant, the wealthier areas lost considerably. The rate liability for elementary education in different parts of the country varied as much as from 7s. 5d. to 1s. 7½d. All expenditure on higher education received a grant of 50 per cent., and no attempt was made to weight this formula by taking into account local circumstances and needs. [164]

The government's proposals for the payment of annual grants by the Minister in accordance with the duty imposed on him by the Education Act (d) are set out in the Financial Memorandum to the Education Bill, 1943 (e). There it is proposed to introduce a single combined grant for all forms of education as from 1st April, 1945. It is obviously impossible to continue the separate grant regulations for elementary and higher education. The grants which were paid to each authority for the year 1938–39 will be added together and the result expressed as a percentage of the total net recognisable expenditure of the authority for that year. In the case of county councils, the grants and expenditure for elementary education of the former authorities for elementary education only, will be added to the county figures. These percentages will be the combined standard percentages of expenditure on which the revised grant system will be based. Some small attempt to ease the burden of the local authorities will also be made by the addition to the percentage so obtained, a further 2 per cent. for each authority in the year 1945–6, and further increases of 1 per cent. until a total increase of 5 per cent. is reached in the fourth year 1948–9. In the areas of former authorities for elementary education only, the power to raise a rate for educational purposes is lost to the county council, and the rate as fixed by the county council will now apply to the areas of those former authorities. Apart from any variation in the rate levied owing to the implementation of the Act, there is likely to be a sudden change in the rate required in such areas if the rate levied differed considerably from that made by the county, and in some cases the increase or decrease may be substantial. To prevent this shock in the more serious cases where the increase or decrease would have been more than 6d. in the year 1938–39, provision is made in the Act (f) for the application of the formula described in the Seventh Schedule for a period up to five years. The general effect of this formula is that in those areas where it is applied, the rate levied will increase or decrease by stages each year until it equals that levied in the county as a whole. [165]

Expenditure on school meals will not be included in the expenditure recognised for the combined standard percentage grant, but will continue to receive the 80 per cent. higher rate of grant announced in Board of Education Circulars 1520 and 1567. Expenditure on school milk will be repaid in full. [166]

The effect of these proposals will be that the central authority will in the first year contribute 51.36 per cent. and by the fourth year 54.36 per cent. of the total expenditure by local authorities. To meet the difficulties of the poorer authorities it was proposed that this percentage should be increased by 0.64 per cent., making the percentages 52 and 55 respectively. This 0.64 per cent. is equivalent to £900,000 which will be distributed to the poorer authorities in the light of the expenditure of those areas in connection with services other than education. An additional grant of less than one million, to be distributed among not a few authorities, would not have been of very great assistance to them. To meet this criticism it was announced during the Committee Stage of the Bill (g) that the Government proposed to make available a sum of between £1,500,000, and £2,000,000

(b) National Economy (Education) Order, 1931, S.R. & O. 1931 No. 811.
(c) Education Act, 1921, s. 118 (2); 7 Halsbury's Statutes 193.
(d) Education Act, 1944, s. 100 (1) (a).
(e) See *post*, pp. 77–79.
(f) S. 110.
(g) 398 H. of C. Official Report 1851.

altogether, that is, an additional sum of nearly £1,000,000 on the original proposal. This sum would be distributed between the thirty or forty poorer authorities. [167]

Thus, briefly, the Government's proposals are to continue the effect of the previous grant formula as it worked in the year 1938–39, to add to this another 5 per cent. for all authorities, and to assist the poorer authorities with a further sum of nearly £2,000,000. In spite of these concessions dissatisfaction has been expressed by the Local Education Authorities with the effect of the previous grant formula thus given a new lease of life, though its development has been arrested since the year 1938–39. The government have, however, given a clear promise (h) that the grant formula now proposed is to be transitional. As soon as possible a new formula must be found. The difficulty is to find one which will enable a poor authority to afford the same expenditure as a rich authority, without relieving them of all responsibility to make some contribution themselves. On the other hand experience has shown that the services provided by many richer authorities are less generous than those provided by many poorer authorities, and now that the Minister is given much greater power for the control and direction of the Local Education Authorities, it is essential if this direction is to be effective, that he should contribute substantially to the expenditure even of a rich authority. It is probably impossible to find a single formula which will cover the very different circumstances of the richest and of the poorest authorities. It may be necessary, therefore, to devise a general formula to cover the needs of the majority of authorities, and to apply in addition, separate formulas for the richer and for the poorer authorities. Whatever formulas are devised there can be no doubt that the interests of progressive educational reform require that the basis of the general formula should be a percentage grant, and not a block grant which cannot easily be varied according to changing circumstances. [168]

Some doubt has been expressed of the capacity of Local Authorities in general to meet the increase of £28,000,000 ultimately envisaged as falling to be borne by them when the reforms introduced by the Education Act, 1944, are fully implemented, especially when their commitments with regard to other aspects of social reconstruction are considered. If they cannot raise this sum, the Local Education Orders, directions and regulations of the Minister are likely to be of little effect. Before the full weight of this burden is felt, it is essential that a new formula be found and possibly a new method of raising local funds. If not, it will not be the fault of the Local Education Authorities if, owing to their inability to provide the necessary money, they are unable fully to implement the provisions of the Act. [169]

7. THE TRANSITION FROM THE OLD TO THE NEW SYSTEM

The reforms introduced in the law of education by the Education Act, 1944, are so far reaching that it will take time for them to be carried out. The Act provides for this by arranging a time-table for the different parts to come into operation (a) and by allowing during the transitional period for the organisation of schools to continue in terms of the old system. [170]

The first action to be taken under the Act was the appointment by His Majesty of a Minister, which, pursuant to ss. 1, 2 and 121 of the Act was made on August 10, 1944, and that date was declared to be the date on which the first appointment under the Act by a Minister of Education took effect (b). Until the Minister makes new orders or regulations, etc., the orders and regulations made under the Education Act, 1921, or any other Act now repealed, will continue in force unless revoked or varied (c). The reforms

(h) *Ibid.*, cols. 1848 and 1869.
(a) See s. 2 of this Introduction, *ante*, p. 4.
(b) See the Education (Date of Appointment of Minister) Order, 1944, S.R. & O. 1944 No. 937.
(c) S. 121.

in the system cannot be carried out without authorities to take the necessary action and the necessary administrative machinery must therefore be set up. Though the new authorities are not constituted until the 1st April, 1945, in order to secure that the necessary action under Part II of the Act may be taken without delay, or to prevent difficulties in its operation, the Minister may require any Local Education Authority or former authority to exercise immediately any functions that they are required to exercise after 1st April, 1945 (d). Thus, if he thinks it necessary, the Minister will constitute any Joint Education Boards, secure the constitution of education committees, and of any divisional executives. The County Education Authorities, themselves, will be well advised, whether or not required to do so by the Minister, to prepare, in consultation with their county districts, their schemes of divisional administration, though the final arrangements may be delayed until it is clear which districts will claim exception. These claims must be made before the 1st October, 1944 (e). After the 1st April, 1945, and when the schemes of administration have been approved, consideration must be given to the duties to be carried out by the officers transferred from the former authorities to the new authorities and to the compensation payable to those who may suffer pecuniary loss thereby or to those officers of the county authorities who suffer pecuniary loss as a result of the transfer of officers from the former authorities or as a result of the creation of a Joint Education Board (f). Agreements will also have to be made between the former and the new authorities for the adjustment of their property rights and liabilities as a result of the transfer of property under s. 6 of the Act (g).

[171]

When the new Local Education Authorities have been constituted, or before if so required by the Minister (h), Development Plans must be prepared for submission to the Minister by the 1st April, 1946, defining which schools the authority propose to maintain as primary, which they propose to maintain as secondary and which will continue as " all age " schools (i). The Plan must also show which schools the authority propose to maintain as county schools and which will be maintained as voluntary schools, and the managers or governors of any schools affected by the Plan must be consulted. The authority must survey all the schools and decide what new schools should be established, what alterations and improvements are necessary, estimate the cost of such alterations, and inform the managers or governors of voluntary schools so that they may be in a position to decide whether to apply for their schools to be classified as aided, controlled or special agreement schools (j). Until the managers or governors of a voluntary school have applied for their schools to be so classified and their applications decided, all voluntary schools will be deemed to be aided schools, but new bodies of managers or governors need not be constituted, the school will be conducted and maintained as it has been hitherto, and no maintenance contributions will be payable by the Minister (k). Until the Local Education Order comes into operation, unless the Minister directs otherwise, every school that was used for providing primary education shall be managed and conducted as a primary school and every school that was used for providing secondary education shall be managed and conducted as a secondary school, and schools that provided both primary and secondary education shall be managed and conducted as primary schools (l). Even when the Local Education Order has been issued, so long as a school is used for providing both primary and secondary education it will be conducted and managed as a primary school except where the primary education is provided in a separate junior or preparatory department, in which case the Minister may direct that the school will be deemed to be a secondary

(d) S. 108 (1).
(e) First Schedule.
(f) S. 98 (1).
(g) S. 96.
(h) S. 108 (1).
(i) S. 11 (2) (e) and proviso.
(j) S. 15.
(k) S. 32.
(l) S. 31.

school (m). If, in consequence of a school becoming a special agreement or controlled school, or if within six years after the passing of the Act, a school maintained by a Local Education Authority is discontinued, a teacher in such a school who suffers pecuniary loss may be compensated (n). The next step will be the drawing up of instruments and rules of management and instruments and articles of government (o) and the grouping of schools under one management where appropriate (p). [172]

Before the 1st April, 1945, preparations must be made for the raising of the compulsory school age to fifteen years (q). This will mean the provision of additional accommodation in many cases. This can only be provided quickly if some method of prefabrication is adopted on the lines suggested by the committee appointed by the President of the Board of Education to consider the possibilities of this method of construction (r). Temporary accommodation may be provided by a Local Education Authority for a voluntary school if they apply to the Minister for authorization to do this on the ground that it is necessary owing to difficulties arising out of war conditions or the operation of Part II of the Act. The authorization must be withdrawn as soon as there has been sufficient opportunity for permanent accommodation to be provided(s). The additional teachers may be found if the Board of Education Scheme for Emergency Training Centres is successful, and if the salaries and conditions of service in the profession are likely to be such that they attract a considerable number of those men and women now in some form of national service. If the accommodation and teachers cannot be found in time to raise the school leaving age on the 1st April, 1945, then the Minister will postpone it for up to two years (t). In considering whether or not it is possible to raise the leaving age on the 1st April, 1945, it will be remembered that teachers and accommodation will be needed for only one-third of the total age group by the autumn of that year, for the second third only by January, 1946, and that the full effect of raising the age will not be felt until after the Easter holidays in 1946. Of course, when the age is raised to fifteen no child who has already left school will be required to return, even though he is not yet fifteen (u). Though no provision is made in the Education Act, 1944, for the granting of allowances to children at school, other than expenses necessary to enable them to take part in any school activities, any allowance granted to a particular child by a former authority may be continued (v). In preparing their Development Plans, and especially when considering the purchase of sites and the erection of new buildings, Local Education Authorities would do well to make provision also for the raising of the compulsory school age to sixteen. Otherwise difficulties will certainly arise later, and the Order in Council directing that the age should be raised to sixteen (w) may be unnecessarily delayed. [173]

Until the scheme of further education for an area has been approved by the Minister, the Local Education Authority must, unless the Minister directs otherwise, continue to maintain or assist any school or other educational institution which they, or the council of any county district in their area, maintained or assisted under the powers conferred by s. 70 of the Education Act, 1921. They may also provide additional facilities for further education, other than county colleges, if the Minister approves (x). It will be the duty of Local Education Authorities to establish county colleges on the date determined by Order in Council. This may be any date after

(m) S. 114 (3).
(n) S. 98 (2).
(o) S. 17.
(p) S. 20.
(q) S. 35.
(r) Ministry of Works Post War Buildings Studies No. 2 Standard Construction for Schools.
(s) Education Act, 1944, s. 109.
(t) S. 108 (3). This article has already been taken; S.R. & O. 1944 No. 979.
(u) S. 114 (6).
(v) S. 81 (*d*).
(w) S. 35.
(x) S. 47.

the 1st April, 1945, and may not be later than the 1st April, 1948, or, if the raising of the school leaving age is postponed until 1st April, 1947, not later than the 1st April, 1950. Before that date, as soon as the Minister considers it practicable, they will be required to prepare plans showing the provision they propose to make for county colleges (y). [174]

Two further points of importance should be noted during this transitional period. First, the abolition of all school fees in maintained schools takes effect on April 1, 1945, and the arrangement to be made for the allocation of pupils at about the age of eleven to that form of secondary education most suited to their ability and aptitude will have to be considered, as the existing method of selection may not be appropriate. The selection of pupils for junior or preparatory departments of secondary schools is another immediate and related problem. Secondly, after April 1, 1945, the school day in all maintained schools must begin with collective worship on the part of all pupils unless the school premises make this impracticable (z); and the religious instruction in county schools and in certain cases in voluntary schools must be in accordance with an agreed syllabus prepared in accordance with the procedure described in the fifth schedule. It will be necessary therefore, for Local Education Authorities to adopt a syllabus of religious instruction before the 1st April, 1945 (unless a former authority had adopted one (zz)), until a syllabus can be prepared by a conference in the prescribed manner. [175]

When the Minister has been able to appoint sufficient inspectors, Part III of the Act will be brought into operation by Order in Council, and all independent schools will be required to be registered and inspected. In the meantime, however, regulations will be issued requiring them to keep registers of the pupils at the school, and to give information as to the attendance of the pupils to the Minister and to the Local Education Authorities (a). [176]

The Education Act, 1944 is described as an Act to reform the law relating to education in England and Wales. By far the greater part of its provisions are concerned with the administrative machinery which is an essential preliminary to any reform. It has been said that the function of educational law and administration is to secure that the right pupils are taught in the right schools by the right teachers. When that has been done, the quality of the education provided will depend on the work of the teacher. In this work he may be guided, advised and encouraged by administrators, inspectors and the Advisory Councils, but ultimately his success depends on the support and understanding of public opinion. Educational reform is a slow process and the quality of the teachers can never be much higher than that of the population from which they are drawn. Though the State decided in 1870 to take vigorous action to fill the gaps left by the voluntary system, it was not until 1893 that it was possible to raise the age for compulsory attendance to eleven years, and it was from the children educated during that period that the teachers to effect the reforms of 1902 had to be found. A teacher born in 1880 will be due to retire as the Education Act, 1944, comes into effect. If county colleges are not established until 1950, no child now over nine years of age will have the benefit of continued further education in these colleges. The need for swift action is obvious and only with courageous and far-sighted administration will, in the near future, the effect of the Education Act, 1944, be seen in the "spiritual, moral, mental and physical development of the community". [177]

8. EDUCATION IN WALES

In the White Paper on Educational Reconstruction (b) it was observed that "ever since the passing of the Welsh Intermediate Education Act, 1889 (c) a system of secondary education has been provided and vigorously

(y) S. 43 (2).
(z) S. 25 (1).
(zz) S. 114 (4).
(a) S. 80 (1).
(b) July 1943, Cmd. 6458, para. 119.
(c) 7 Halsbury's Statutes 265.

developed in Wales, and within recent years expressions such as 'free secondary education' and 'secondary education for all' had the force of a popular demand". [178]

In general the provisions of the Education Act, 1944, are applicable to Wales, including Monmouthshire, as they are to England, but Wales has special problems of her own which call for a different and more sympathetic approach than has always been the case in the past. [179]

In the first place religion and language have inspired deeper feeling in Wales than has been the case elsewhere in recent years, and the tendency to stress the distinctive features of Welsh culture is increasing. [180]

In the second place the problem of finance in the sparsely populated rural areas is more acute than in most English areas, and the peculiarities in the admixture and distribution of the population in other areas create distinct problems. It is difficult to imagine any one system which could operate satisfactorily in the purely agricultural counties such as Cardiganshire or Montgomery, in the crowded industrial parts of Glamorgan and Monmouth, and along the North Wales coast with its large admixture of residents who derive from Lancashire. There must be flexibility, and local conditions must be allowed to govern action in accordance with the local sentiment while at the same time there must be co-ordination with the general national system. [181]

There is a keener appreciation of these factors to-day than was formerly the case (d), and this change is more important than any particular statutory provisions could be, but attention may be called to the following special provisions in the Act which relate to Wales only :—

(i) There is a separate Central Advisory Council for Wales and Monmouthshire (e).

(ii) Special financial provisions have been made for Wales and Monmouthshire (f) which enable the Minister to continue to pay to the Welsh Local Education Authorities the special grants now payable under s. 9 of the Welsh Intermediate Education Act, 1889 (g). There is also provision for the amendment of the schemes made under that Act so as to discontinue the payment of rate monies into the Funds set up thereunder, and these rate contributions will no longer be called for when the costs of maintaining the schools are met by Local Education Authorities under the general provisions of the Act. There are consequential provisions designed to preserve the existing financial position of the Welsh Central Board.

(iii) In the case of Wales and Monmouthshire the Local Education Authority is not required to appoint a Church of England Committee to be one of the constituent bodies which comprise the conference which, under the provisions of s. 20 and Sched. 5 of the Act, is to prepare the Agreed Syllabus of Religious Instruction (h). [182]

In conclusion it may be observed that the ability of the Welsh Local Education Authorities to give full effect to the provisions of the Act depends upon financial considerations, and grave misgivings on this point were expressed by many of the Welsh Members of Parliament during the passage of the Bill through the House of Commons. [183]

(d) See paras. 120–125 of Cmd. 6458; Ch. 16 of the McNair Report on the Supply, Recruitment and Training of Teachers and Youth Leaders, especially para. 465; Ch. 9 of the Fleming Report on the Public Schools and the General Educational System.

(e) S. 4 (1). As the Central Advisory Councils now have the right to take the initiative in advising the Minister this separate Welsh Council will have full opportunity of putting forward the views of Wales.

(f) S. 101.

(g) 7 Halsbury's Statutes 269. S. 9 is repealed as from the date of the commencement of Part II of the Education Act, 1944. As to intermediate education in Wales at present, see 12 Halsbury (2nd Edn.) 122–126 and Ch. 9 of the Fleming Report on Public Schools and the General Educational System.

(h) Sched. 5, para. 2 (*b*). It would, however, be proper to appoint a Church of England Committee when that church ought, having regard to the circumstances of the area, to be represented.

FINANCIAL MEMORANDUM

NOTE.—The following memorandum on the financial implications of the Education Act, 1944, was printed with the Bill as originally introduced in the House of Commons.

1. The proposals for educational reform, for which provision is made in the Bill, involve additional public expenditure in excess of what may be expected to be the cost of existing educational services immediately before any of those proposals come into operation, to the extent shown in the following Table.

(*In so far as this and the following Tables include capital expenditure such expenditure has been expressed in terms of loan charges*).

TABLE I

Additional expenditure from public funds attributable to the proposed legislative reforms in England and Wales

	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	Ultimate Cost
	£(m)	£(m)	£(m)	£(m)	£(m)	£(m)	£(m)	£(m)
1. Recasting Full-time Education	2·5	3·4	7·3	11·9	16 1	20·3	24·5	48·5
2. Reform of Dual System	—	—	0 5	0·9	1·3	1·6	1·9	4·6
3. Young People's Colleges	0·1	0·3	0·4	2·4	3·6	4·9	5·5	5·5
4. Technical and Adult Education	2·3	3·4	4·5	5·2	5·8	6·5	7·3	8·7
5. Nursery Schools ..	0·5	1·0	1·5	2·0	3·0	4·0	5·0	6·0
6. Medical Inspection and Treatment	0·1	0·2	0·2	0·5	1·3	2·1	3·1	6·5
7. Totals	5·5	8·3	14·4	22·9	31·1	39·4	47·3	79·8

2. It will be seen from Table I that the ultimate additional cost will be reached gradually over a period of years. The incidence of the additional expenditure in any year has been based on the assumption that Parts II and IV of the Bill will become fully operative on April 1st, 1945, i.e. that the school leaving age will be raised to 15 on that date. The 1st year, therefore, of the heading to the table relates to the financial year 1945–46.

3. The determination of the date by which the school leaving age will be raised to 16 depends on such considerations as the supply of teachers and the provision of premises and the cost of this step has, therefore, for purposes of convenience not been included in any particular year but has been included under the heading " Ultimate Cost ". This arrangement, however, does not prejudice in any way the possibility of introducing this reform before the end of the seventh year shown in Table I.

4. The first task of the new local education authorities will be to prepare their development plans under Clause 10 and submit them to the Minister, who will make Local Education Orders under Clause 11. Until these steps, which will occupy between one and two years from April 1st, 1945, have been taken, the recasting of the system of full-time education and the reform of the dual system cannot begin to operate fully. It is not anticipated that in respect of this period there will be any substantial additional expenditure on school premises apart from the acquisition of sites; thereafter the rate of development will depend on the availability of building labour and materials, but provision is made in Table I for expenditure under these heads to begin to accrue as from the 3rd year (1947–48). There will, however, be a relatively substantial early expansion of nursery schools, which do not present the same difficulties of accommodation.

5. In accordance with the provisions of Clause 59, tuition fees will not be chargeable in Primary and Secondary schools maintained by local education authorities after April 1st, 1945. The cost of this step has, therefore, been included in the 1st year (1945–46) under the item " Recasting Full-time Education ".

6. Under Clause 41, the duty of local education authorities to provide young people's colleges will come into operation on a date to be determined by Order in Council. It has been assumed that appreciable expenditure on such provision will begin to be incurred in the fourth year (1948–49).

7. The full development of technical and adult education is dependent upon the time when the schemes of further education for this purpose prepared by the local education authorities are approved. In the early years, however, allowance has been made in the figures given for an accelerated growth of this service, as well as for preliminary expenditure in respect of the new developments to be contained in the schemes.

8. The expenditure shown in respect of medical inspection and treatment is attributable in part to the raising of the school leaving age to 15 and in part to the widened scope of medical inspection and treatment.

9. During the interval between the passing of the Bill and April 1st, 1945, the existing local education authorities will continue, and the separate grants for elementary and higher education will be paid on the existing basis. In order, however, to enable the new local education authorities to play their full part in the reforms it is proposed thereafter to make a change in the system. Since these new Authorities will be charged with all educational functions, it is proposed to introduce a single combined grant for all forms of education as from April 1st, 1945. The basis of this combined grant will be as follows. The grants for elementary and higher education which were paid to each authority for the year 1938–39 will be added together and the result expressed as a percentage of the total net recognisable expenditure of that authority for that year. In the case of county councils, the grants and expenditure for elementary education of the former Part III Authorities within their geographical areas will be added to the county figures. These percentages will be the combined standard percentages of expenditure on which the revised grant system will be based. In the first year, 1945–46, each of the combined standard percentages will be increased by 2 and there will be further successive increases of 1 until an increase of 5 is reached in the fourth year, 1948–49.

10. In 1938–39 the Board's grant for the country as a whole represented 49·36 per cent. of the net recognisable expenditure of local education authorities. The aggregate grants after the increases described above will thus rise in the first year to 51·36 per cent. and by the fourth year to 54·36 per cent. This new grant will apply to expenditure on existing services (other than the supply of school meals and milk) as well as to expenditure on the proposed reforms. It is proposed, however, to bring up the percentages just mentioned to the 52 per cent. and 55 per cent. suggested in the Command Paper on Educational Reconstruction (Cmd. 6458) by adding 0·64 per cent. It is intended to apply this further percentage of expenditure, which will be of the order of £900,000 in the fourth year, 1948–49, in the form of additional grants to the poorest authorities in order to assist them to meet the necessary costs of educational reconstruction. The exact basis of distribution of these additional education grants to the poorest authorities will need further examination in the light of the financial position of these areas in connection with services other than education.

11. Expenditure on school meals and milk will fall outside this formula. Expenditure on school meals will attract the special rates of grant at present payable in respect of public elementary schools. The rate of grant for expenditure on school milk will remain at 100 per cent. These items cannot be included in Table I because the position with regard to the provision of meals and milk is not precisely defined by the Bill pending consideration of the question in detail in connection with the scheme for children's allowances.

12. The revised grant system described in the preceding paragraphs will result in payment of the three following types of grant.

(i) A main grant to each authority based on the percentage which the total grants for education for that authority's area bore to the corresponding expenditure on education in 1938–39. This percentage will be increased by stages to a total increase of 5 in the fourth year (i.e. 1948–49).

(ii) Additional grants to the poorest areas, on a basis yet to be settled.

(iii) Grants at special rates in respect of expenditure on school meals and milk.

13. The progressive increase in the expenditure to be met from rates and taxes respectively over that borne at the time of introducing the reforms is shown in the following Table. In arriving at this total of pre-reform expenditure 20 per cent. has been added to the expenditure of 1938–39 in order to meet the general rise in costs. A further adjustment has also been made in respect of the estimated expansion in the provision of school meals and milk.

TABLE II

Total expenditure from public funds in England and Wales

	Total	Increase over pre-reform expenditure	Proportion of Total met by Taxes	Increase over pre-reform expenditure	Proportion of Total met by Rates	Increase over pre-reform expenditure
	£(m)	£(m)	£(m)	£(m)	£(m)	£(m)
Pre-reform expenditure ..	123·4	—	63·9	—	59·5	—
1st year of reforms ..	128·9	5·5	70·7	6·8	58·2	—1·3
2nd year of reforms ..	131.7	8·3	73·3	9·4	58·4	—1·1
3rd year of reforms ..	137·8	14·4	77·8	13·9	60·0	0·5
4th year of reforms ..	146·3	22·9	83·8	19·9	62·5	3·0
5th year of reforms ..	154·5	31·1	88·3	24·4	66·2	6·7
6th year of reforms ..	162·8	39·4	92·8	28·9	70·0	10·5
7th year of reforms ..	170·7	47·3	97·2	33·3	73·5	14·0
Ultimately	203·2	79·8	115·1	51·2	88·1	28·6

14. The above figures relate only to England and Wales. The statutory grant to the Education (Scotland) Fund will be automatically increased by eleven-eightieths of any increase in the cost of education falling on the Exchequer in England and Wales. Thus the total increase in the cost of education to the tax-payer resulting from the increase in costs, the revision of the grant formula and the proposed reforms, is shown in the following Table.

TABLE III

Increase in Exchequer charge over pre-reform cost. (Great Britain)

	England and Wales	Scotland	Total
	£(m)	£(m)	£(m)
1st year of reforms	6·8	0·9	7·7
2nd year of reforms	9·4	1·3	10·7
3rd year of reforms	13·9	1·9	15·8
4th year of reforms	19·9	2·7	22·6
5th year of reforms	24·4	3·3	27·7
6th year of reforms	28·9	4·0	32·9
7th year of reforms	33·3	4·6	37·9
Ultimately	51·2	7·0	58·2

THE EDUCATION ACT, 1944

7 & 8 Geo. 6, c. 31

ARRANGEMENT OF SECTIONS

PART I

CENTRAL ADMINISTRATION

Section		Page
1.	Appointment of Minister in charge of education and establishment of Ministry of Education	83
2.	Transfer of property and functions to Minister and construction of Acts and documents	85
3.	Seal and acts of Minister	86
4.	Central Advisory Councils	86
5.	Annual Report to Parliament	87

PART II

THE STATUTORY SYSTEM OF EDUCATION

LOCAL ADMINISTRATION

6.	Local education authorities	87

THE THREE STAGES OF THE SYSTEM

7.	Stages and purposes of statutory system of education	93

PRIMARY AND SECONDARY EDUCATION

Provision and Maintenance of Primary and Secondary Schools

8.	Duty of local education authorities to secure provision of primary and secondary schools	97
9.	County schools, voluntary schools, nursery schools, and special schools	100
10.	Requirements as to school premises	103
11.	Development plans as to primary and secondary schools	103
12.	Local education orders with respect to primary and secondary education	107
13.	Establishment and discontinuance of county and voluntary schools	109
14.	Restrictions on discontinuance of voluntary schools by managers and governors	112
15.	Classification of voluntary schools as controlled schools, aided schools, or special agreement schools	113
16.	Transfer of county and voluntary schools to new sites, and substitution of new voluntary schools for old ones	119

Management of Primary Schools and Government of Secondary Schools

17.	Constitution of managers and governors and conduct of county schools and voluntary schools	121
18.	Managers of primary schools	127
19.	Governors of secondary schools	129
20.	Grouping of schools under one management	130
21.	Proceedings of managers and governors of county and voluntary schools	132
22.	Powers of local education authority as to use and care of premises of voluntary schools	133

Secular Instruction and Appointment and Dismissal of Teachers in County and Voluntary Schools

23.	Secular instruction in county schools and in voluntary schools	134
24.	Appointment and dismissal of teachers in county schools and in voluntary schools	136

Religious Education in County and Voluntary Schools

25.	General provisions as to religious education in county and in voluntary schools	139
26.	Special provisions as to religious education in county schools	142
27.	Special provisions as to religious education in controlled schools	143
28.	Special provisions as to religious education in aided schools and in special agreement schools	144
29.	Provisions as to religious instruction in accordance with agreed syllabus	146
30.	Saving as to position of teachers	147

Transitional Provisions as to County and Voluntary Schools

31.	Transitional provisions as to the separation of primary and secondary schools	148
32.	Transitional provisions as to the management and maintenance of voluntary schools	150

Primary and Secondary Education of pupils requiring Special Educational Treatment

Section		Page
33	Education of pupils requiring special educational treatment	151
34	Duty of local education authorities to ascertain what children require special educational treatment	154
	Compulsory attendance at Primary and Secondary Schools	
35	Compulsory school age	155
36	Duty of parents to secure the education of their children	157
37	School attendance orders	158
38	Additional provisions as to compulsory attendance at special schools	160
39	Duty of parents to secure regular attendance of registered pupils	161
40	Enforcement of school attendance	163
	FURTHER EDUCATION	
41	General duties of local education authorities with respect to further education	164
42	Schemes of further education	170
43	County colleges	171
44	Duty to attend county colleges in accordance with college attendance notices	172
45	Administrative provisions for securing attendance at county colleges	176
46	Enforcement of attendance at county colleges	177
47	Interim provisions as to further education	178
	SUPPLEMENTARY PROVISIONS AS TO PRIMARY, SECONDARY AND FURTHER EDUCATION	
	Ancillary Services	
48	Medical inspection and treatment of pupils	179
49	Provision of milk and meals	183
50	Provision of board and lodging otherwise than at boarding schools or colleges	184
51	Provision of clothing at schools maintained by local education authorities	185
52	Recovery of cost of boarding accommodation and of clothing	186
53	Provision of facilities for recreation and social and physical training	187
54	Power to ensure cleanliness	188
55	Provision of transport and other facilities	190
56	Power to provide primary and secondary education otherwise than at school	191
57	Duty of local education authorities to report to local authorities under 3 & 4 Geo 5 c 28 in certain cases	192
	Employment of Children and Young Persons	
58	Adaptation of enactments relating to the employment of children or young persons	194
59	Power of local education authorities to prohibit or restrict employment of children	194
60	Effect of college attendance notices on computation of working hours	195
	Miscellaneous Provisions	
61	Prohibition of fees in schools maintained by local education authorities and in county colleges	196
62	Duties of Minister and of local education authorities as to the training of teachers	198
63	Exemption from building byelaws of buildings approved by the Minister	200
64	Exemption of voluntary schools from rates	201
65	Endowments for maintenance of voluntary schools	202
66.	Power of local education authorities to assist governors of aided secondary schools in respect of liabilities incurred before commencement of Part II	202
67	Determination of disputes and questions	203
68	Power of Minister to prevent unreasonable exercise of functions	205
69	Powers of Ministers as to medical examinations and inspections	205
	PART III	
	INDEPENDENT SCHOOLS	
70	Registration of independent schools	206
71	Complaints	208
72	Determination of complaints	209
73	Enforcement	211
74	Removal of disqualifications	212
75	Proceedings before Independent Schools Tribunals and matters relating thereto	212

PART IV

GENERAL

GENERAL PRINCIPLE TO BE OBSERVED BY MINISTER AND LOCAL EDUCATION AUTHORITIES

Section		Page
76	Pupils to be educated in accordance with the wishes of their parents	213
	MISCELLANEOUS PROVISIONS	
77	Inspection of educational establishments	213
78	Provision of certain ancillary services for pupils not in attendance at schools maintained by local education authorities	216
79	Supplementary provisions as to medical inspection and treatment	217
80	Registration of pupils at schools	218
81	Power of local education authorities to give assistance by means of scholarships and otherwise	219
82.	Powers of local education authorities as to educational research	220
83	Powers of local education authorities as to educational conferences	220
84	Power of local education authorities to make grants to universities and university colleges	221
85	Power of local education authorities to accept gifts for educational purposes	221
86	Extension of power to make schemes under the Endowed Schools Acts, and modifications of those Acts and of 4 & 5 Vict c 38	222
87	Exemption of assurances of property for educational purposes from the Mortmain Acts	223
	ADMINISTRATIVE PROVISIONS	
88	Appointment of chief education officers of local education authorities	225
89	Remuneration of teachers	225
90	Compulsory purchase of land and other dealings in land by local education authorities	226
91	Accounts of councils of county boroughs and audit thereof	228
92	Reports and returns	228
93	Power of Minister to direct local inquiries	229
94	Certificates of birth and registrars' returns	229
95	Provisions as to evidence	230
96	Provisions consequential on cessation of functions of former authorities	231
97	Modification of 2 & 3 Geo 6 c 94	233
98	Compensation of persons prejudicially affected by this Act	234
99	Powers of Minister in default of local education authorities or managers or governors	237
	FINANCIAL PROVISIONS	
100.	Grants in aid of educational services	239
101	Special financial provisions relating to Wales and Monmouthshire	241
102	Maintenance contributions payable by the Minister in respect of aided schools and special agreement schools	242
103	Power of the Minister to make grants in respect of aided schools and special agreement schools transferred to new sites or established in substitution for former schools	243
104	Power of the Minister to make grants in respect of aided schools and special agreement schools established for the accommodation of displaced pupils	244
105	Power of Minister to make loans to aided schools and special agreement schools in respect of initial expenditure	246
106	Contributions between local education authorities	248
107	Expenses of Ministers	249
	PART V	
	SUPPLEMENTAL	
108	Power to facilitate commencement of Part II	250
109	Power of Minister to authorise local education authorities to provide temporary assistance for voluntary schools	252
110	Power of Minister to adjust variations of rates consequent upon commencement of Part II	253
111	Revocation and variation of orders and directions	254
112	Regulations to be laid before Parliament	254
113	Notices	254
114	Interpretation	255
115	Saving as to persons in the service of the Crown	265
116	Saving as to persons of unsound mind, and persons detained by order of a court	266
117.	Application to London	266
118	Application to Isles of Scilly	267
119	Commencement	267
120.	Amendment of enactments	268

Section		Page
121.	Repeal of enactments	270
122.	Short title and extent	271

SCHEDULES:

First Schedule.—Local administration	271
Second Schedule.—Transfer to a local education authority of an interest in the premises of a voluntary school	282
Third Schedule.—Special agreements in respect of certain voluntary schools	283
Fourth Schedule.—Meetings and proceedings of managers and governors	285
Fifth Schedule.—Procedure for preparing and bringing into operation an agreed syllabus of religious instruction	286
Sixth Schedule.—Constitution of Independent Schools Tribunals	287
Seventh Schedule.—Adjustment of variations of rates consequent upon commencement of Part II of this Act	288
Eighth Schedule.—Amendment of enactments	291
Ninth Schedule.—Enactments repealed	294

An Act to reform the law relating to education in England and Wales, [3rd August, 1944.] [185]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

GENERAL NOTE

The title of this Act, which is "to reform the law relating to education in England and Wales" shows by its very brevity that there is envisaged a great change in the law relating to education. It makes, in fact, the most sweeping changes in the educational law of England and Wales since the passing of the first Elementary Education Act in 1870, 7 Halsbury's Statutes 120. It is a self-contained measure which replaces and reforms almost the whole of the existing law of education. It involves the reconstruction of the public system of education and for the first time requires the registration and inspection of schools outside that system. The Act is the first of the large-scale measures of reconstruction which have been promised by His Majesty's Government and is based upon a White Paper (Cmd. 6458 of 1943) which was presented to Parliament by the President of the Board of Education in July, 1943, and was then published under the title of "Educational Reconstruction", though the proposals contained in the White Paper have been subsequently modified and additions have been made in the light of public consideration of the White Paper and Parliamentary consideration of the Education Bill which was subsequently introduced into the House of Commons.

The Government's purpose in putting forward the reforms which have now been embodied in the Act was (Cmd. 6458, p 3):—

"to secure for children a happier childhood and a better start in life; to ensure a fuller measure of education and opportunity for young people and to provide means for all of developing the various talents with which they are endowed and so enriching the inheritance of the country whose citizens they are".

In the Government's view (ibid):—

"The new educational opportunities must not, therefore, be of a single pattern. It is just as important to achieve diversity as it is to ensure equality of educational opportunity. But such diversity must not impair the social unity within the educational system which will open the way to a more closely knit society and give us strength to face the tasks ahead. The war has revealed afresh the resources and character of the British people—an enduring possession that will survive all the material losses inevitable in the present struggle. In the youth of the nation we have our greatest national asset. Even on a basis of mere expediency, we cannot afford not to develop this asset to the greatest advantage. It is the object of the present proposals to strengthen and inspire the younger generation. For it is as true to-day as when it was first said, that 'the bulwarks of a city are its men'".

PART I

CENTRAL ADMINISTRATION

1. Appointment of Minister in charge of education and establishment of Ministry of Education.—(1) It shall be lawful for His Majesty to appoint a Minister (hereinafter referred to as "the Minister"), whose duty it shall be to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities (a), under his control and direction (b), of the national policy for providing a varied and comprehensive educational service in every area. [186]

(2) The Minister shall for all purposes be a corporation sole (c) under the name of the Minister of Education, and the department of which he is in charge shall be known as the Ministry of Education. [187]

(3) The Minister may appoint a Parliamentary Secretary to the Ministry of Education, and such other secretaries, officers, and servants, as the Minister may, with the consent of the Treasury, determine, and, subject to the provisions of the Ministers of the Crown Act, 1937 (d), as to the remuneration of the Parliamentary Secretary, there shall be paid to such secretaries, officers, and servants, such remuneration as may be determined in like manner. [188]

(4) The Minister shall take the oath of allegiance and the official oath, and the Promissory Oaths Act, 1868 (e), shall have effect as if the Minister of Education were named in the First Part of the Schedule to that Act. [189]

NOTES

This and the four following sections of the Act comprised in Part I came into operation *immediately the Act was passed*, namely, 3rd August, 1944 (section 119, p. 267, *post*), though, by section 121, p. 270, *post*, the previous enactments relating to the Board of Education and the President of the Board were not repealed until the appointment by Order in Council of the Rt. Hon. R. A. Butler, M.P., the last President of the Board of Education, as the first Minister of Education on 10th August, 1944.

Governmental supervision of the system of education was first exercised by the Lords of the Committee for the time being of the Privy Council for Education, which was established by Order in Council in 1839. This Committee later became known as the Education Department (Elementary Education Act, 1870, section 3, and Interpretation Act, 1889, section 12 (7); 18 Halsbury's Statutes 995). The Board of Education as such was first established by the Board of Education Act, 1899, section 1 (1); 7 Halsbury's Statutes 124, and charged with the superintendence of matters relating to education in England and Wales. The Education Act, 1921, section 1, restated the responsibility of the Board for these matters, though in fact several types of educational activity were dealt with by Departments other than the Board, including agricultural education (Ministry of Agriculture and Fisheries), approved schools (Home Office), education in poor law institutions (Ministry of Health), education in the services (Admiralty, War Office and Air Ministry), and universities (Treasury).

Sub-section (1) *replaces section 1 (1)* of the Board of Education Act, 1899; 7 Halsbury's Statutes 124, and section 1 of the Education Act, 1921; *ibid.* 130, and, instead of being charged merely "with the superintendence of matters relating to education in England and Wales" the Minister (so-called for the first time) has imposed upon him the duties:

(1) of promoting the education of the people of England and Wales and the progressive development of institutions devoted to that purpose; and

(2) of securing the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area.

Sub-section (2) replaces section 1 (2) of the Board of Education Act, 1899; 7 Halsbury's Statutes 124. Although it was first intended in the Bill to retain the title of "Board of Education" and "President" of the Board it was decided during the passage of the Bill to make a break with tradition and to adopt the titles as well as the status of "Minister" and "Ministry" of Education.

Under section 1 (2) of the Act of 1899 the Board consisted of a President, and of the Lord President of the Council (unless he was appointed President of the Board), the Principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer. It is, however, well-known that *in fact the Board never met* and since the Minister is for all purposes to be a corporation sole, the Board as such, which never existed in fact, has now ceased to exist at law.

Sub-section (3) replaces section 6 of the Act of 1899; 7 Halsbury's Statutes 125, which also provided for the payment to the President of a salary of £2,000 annually. As a result of the Ministers of the Crown Act, 1937; 30 Halsbury's Statutes 117, however, which (*inter alia*) increased the Minister's salary to £5,000 per annum, and of the new status of the Minister, it is no longer necessary to deal with this matter in the Act. The provision in the first lines of the sub-section as to the appointment of a Parliamentary Secretary replaces section 8 (2) of the Act of 1899; 7 Halsbury's Statutes 125.

Sub-section (4) replaces section 8 (1) of the Act of 1899; 7 Halsbury's Statutes 125. The effect of these inclusions in Part I of the Schedule to the Promissory Oaths Act, 1868; 3 Halsbury's Statutes 381, is to require the oath of allegiance and the official oath to be taken as soon as may be after acceptance of office though, under section 11 of that Act it was permissible, if the President's religious persuasion so required, for the oath to be replaced by a solemn declaration. Since the obligation to take the oath is specifically imposed by the first words of the sub-section the possibility of this having a restrictive effect upon the terms of the Act of 1868 should be considered. Failure to take the oath, *which is tendered by the clerk of the council* and taken in the presence of His Majesty in Council or otherwise as His Majesty may direct, involves vacation of office.

(a) **"Local authorities".**—It would appear that the word "education" has been inadvertently omitted from this term.

(b) **"Under his control and direction".**—For the first time the Minister is specifically given by statute a general power of controlling and directing the execution by local authorities of the national policy of education as distinct from his previous powers of superintendence. In fact his powers of direction and control are, as in the past, given in various provisions of the Act in relation to a variety of matters, in addition to which control will no doubt continue to be exercised by making the payment of grant contingent upon compliance by the local education authority with the Minister's desires. The general term here used, however, indicates an enlargement of governmental policy and that, in future, the Minister will under the section be required to take more active steps to ensure that every local education authority complies with government policy. Similarly, local education authorities will find that the principle of their

freedom of action within the statutory limits of the various enactments relating to education will to a greater or lesser extent become subordinated to the carrying out of that policy. In particular, section 99, p. 237, *post*, enables the Minister to enforce the discharge of any duties placed upon local education authorities or upon the managers or governors of county or voluntary schools by or under any provision of the Act. Section 68, p. 205, *post*, goes even further than this. It enables the Minister, if he thinks that a local education authority or the managers or governors of a county or voluntary school have acted or propose to act unreasonably, not only in the performance of a duty under the Act, but even in the exercise of a power, to give such directions as he thinks fit. This constitutes the greatest restriction upon the autonomy of local authorities yet contained in any local government statute.

(c) **" Corporation sole ".**—Halsbury (Laws of England, 2nd Edition, vol. 8, p. 4), defines the term as :—

> " a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold, and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alien) lands, tenements, and hereditaments, and now, it would seem, also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous, that is, there may be, and mostly are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy, or no one in existence in whom the corporation resides and is visibly represented."

(d) **" Ministers of the Crown Act, 1937 ".**—See 30 Halsbury's Statutes 117. By section 114 (8), p. 258, *post*, unless the context otherwise requires, references in this Act to any enactment or any provision of any enactment shall be construed as references to that enactment or provision as amended by any subsequent enactment, including this Act.

(e) **" Promissory Oaths Act, 1868 ".**—See note under sub-section (4), *supra*.

2. Transfer of property and functions to Minister and construction of Acts and documents.—(1) All property which, immediately before the date declared by His Majesty in Council to be the date on which the first appointment (a) under this Act of a Minister of Education took effect, was held by the Board of Education constituted under the Board of Education Act, 1899, and all functions exercisable by that Board or the President thereof immediately before that date, and all rights and liabilities, whether vested or contingent, to which that Board or the President thereof were entitled or subject immediately before that date, shall, by virtue of this Act, be transferred to the Minister ; and, except where the context otherwise requires, references in any enactment or other document to the Board of Education, the President of the Board of Education, the Education Department, or the Department of Science and Art shall be construed as references to the Minister, or, where the case so requires, as references to the Ministry of Education. [190]

(2) His Majesty may by Order in Council transfer to, or make exercisable by, the Minister any of the functions of the Charity Commissioners in matters appearing to His Majesty to relate to education, and any such Order may make such provision as appears to His Majesty to be necessary for applying to the exercise of those functions by the Minister any enactments relating to the Charity Commissioners ; and any Order in Council made under this subsection may be varied or revoked by any subsequent Order so made :

Provided that any such Order shall make provision for the determination by the Charity Commissioners of any question whether an endowment or any part of an endowment is held for, or ought to be applied to, educational purposes. [191]

NOTES

Sub-section (1) provides for the transfer to the first Minister appointed under the Act of all property and functions of the Board of Education under the now repealed Board of Education Act, 1899 ; 7 Halsbury's Statutes 124. By section 121, *post*, p. 270, however, the repeal of the Act of 1899 did not take effect until " the date declared by His Majesty in Council to be the date on which the first appointment under this Act of a Minister of Education took effect so that, until that date, viz :—10th August, 1944, the President of the Board appointed under the former Act continued to derive his authority from that Act. As the last President of the Board of Education and the first Minister of Education are one and the same person and the first Minister was appointed (see note (a), *infra*) only seven days after the Act received the Royal Assent the point is largely a technical one.

Sub-section (2) replaces section 2 (2) of the Board of Education Act, 1899 ; 7 Halsbury's Statutes 124. Under the repealed provision three orders, namely, the Board of Education (Powers) Order in Council, 1900 (S.R. & O. 1900, No. 600), the Board of Education (Powers) Order in Council, 1901 (S.R. & O. 1901, No. 587), and the Board of Education (Powers) Order in Council, 1902 (S.R. & O. 1902, No. 647), were made, whose general effect was to transfer to the Board of Education all powers relating to endowments which the Charity Commissioners determined were held solely for educational purposes and which were vested in the Charity Commissioners by any Act with the exception of powers relating to the official trustee of charity lands

and the official trustees of charitable funds As to the meaning of the term " held solely for educational purposes ", see *Re Bellon's Charity* [1908] 1 Ch 205 , 19 Digest 89, *193*

The former provision also enabled the transfer to the Board of any of the powers of the *Ministry of Agriculture and Fisheries relating to education* but this power was not exercised and has not been continued

The sub-section contains a new provision enabling an Order in Council made under the sub-section to be varied or revoked by a subsequent Order similarly made whilst, by proviso (*a*) to section 121, p 270, *post*, the three Orders previously made and to which reference has been made are to continue in operation as though made under the sub section and may be varied or revoked accordingly

(a) " **First appointment** ".—By the Education (Date of Appointment of Minister) Order, 1944, S R & O 1944 No 937, 10th August, 1944, was declared to be the date of the first appointment of a Minister under the section, the order reciting that His Majesty had been pleased to appoint the Rt Hon R A Butler, M P , to this post

3. Seal and acts of Minister.—(1) The Minister shall have an official seal which shall be authenticated by the signature of the Minister or of a secretary to the Ministry of Education or of any person authorised by the Minister to authenticate the seal [192]

(2) The seal of the Minister shall be officially and judically noticed, and every document purporting to be an instrument made or issued by the Minister and either to be sealed with the seal of the Minister authenticated in the manner provided by this section, or to be signed by a secretary to the Ministry of Education or by any other officer of the Ministry authorised to sign it, shall in any legal proceedings be deemed to be so made or issued without further proof, unless the contrary is shown [193]

(3) A certificate signed by the Minister certifying that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of the fact certified. [194]

(4) The Documentary Evidence Act, 1868 (a), shall have effect as if there were included in the first column of the Schedule to that Act the words " the Minister of Education ", and as if there were included in the second column of the said Schedule the words " the Minister of Education, any secretary to the Ministry of Education, or any person authorised by the Minister of Education to issue a certificate for the purposes of sub-section (3) of section two of this Act ", and as if the regulations referred to in that Act included any document made or issued by the Minister [195]

NOTES

Sub-sections (1), (2) & (3) re-enacted sub-sections (2), (3) and (4) of section 7 of the Board of Education Act, 1899 , 7 Halsbury's Statutes 125, with such consequential changes as are rendered necessary by the change of status of the President of the Board to that of Minister, and also replace the first paragraph of section 83 of the Elementary Education Act, 1870, *ibid* 121

Sub-section (4) re-enacts, in effect, the second paragraph of section 83 of the Elementary Education Act, 1870 ; 7 Halsbury's Statutes 121 The effect of the sub section, taken with the Documentary Evidence Act, 1868 ; 8 Halsbury's Statutes 230, and the Documentary Evidence Act, 1882 , *ibid.* 239, which amended it, is that *prima facie* evidence of any order or regulation or of any document made or issued by the Minister may be given in all courts of justice, and in all legal proceedings, by the production of a King's printer's copy thereof, of the *London Gazette* containing a copy thereof, or of a copy or extract purporting to be certified to be true by any of the persons deemed by this sub section to be included in the second column of the Schedule to the Act of 1868 , *ibid* 232 In the event, for example, of the loss of an original document issued by the Minister it would be sufficient to produce in legal proceedings a copy of the document certified by one of the authorised officers of the Ministry.

(a) " **Documentary Evidence Act, 1868** ".—By section 114 (8), p 258, *post*, unless the context otherwise requires, references in this Act to any enactment or any provision of any enactment shall be construed as references to that enactment or provision as amended by any subsequent enactment, including this Act.

4. Central Advisory Councils.—(1) There shall be two Central Advisory Councils for Education, one for England and the other for Wales and Monmouthshire, and it shall be the duty of those Councils to advise the Minister upon such matters connected with educational theory and practice as they think fit, and upon any questions referred to them by him [196]

(2) The members of each Council shall be appointed by the Minister, and the Minister shall appoint a member of each Council to be Chairman thereof and shall appoint an officer of the Ministry of Education to be secretary thereto. [197]

(3) Each Council shall include persons who have had experience of the statutory system of public education as well as persons who have had experience of educational institutions not forming part of that system. [198]

(4) The Minister shall by regulations (a) make provision as to the term of office and conditions of retirement of the members of each Council, and regulations made by the Minister for either Council may provide for periodical or other meetings of the Council and as to the procedure thereof, but, subject to the provisions of any such regulations the meetings and procedure of each Council shall be such as may be determined by them. [199]

NOTES

Under section 4 of the Board of Education Act, 1899, there was established a consultative committee, at least two-thirds of the members being persons qualified to represent the views of universities and other bodies interested in education. The functions of the committee originally included the formation of a register of teachers as well as the duty of advising the Board of Education on any matter which was referred to it by the Board. The first-mentioned function was abolished by section 16 (1) of the Education (Administrative Provisions) Act, 1907; 7 Halsbury's Statutes 127, by which provision was made for the setting up of a Registration Council for teachers and this was constituted by Order in Council on 14th December, 1926 (S.R. & O., 1926, No. 1588).

The consultative committee was established by Order in Council in 1900; its constitution was amended in 1907; and, until it was abolished by the present Act, from 1920 onwards was governed by the Board of Education (Consultative Committee) Order in Council, 1920 (S.R. & O. 1920 No. 1582). Section 2 of the Education Act, 1921; 7 Halsbury's Statutes 131, provided for the continued existence of the Committee and gave further power, which was not exercised, to alter its constitution.

Although the committee has in the past done extremely valuable work, its powers were limited to matters which the Board saw fit to refer to it, and it was not in a position itself to take any initiative. The two new central advisory councils to be appointed by the Minister will, on the other hand, not only be required to advise the Minister on questions which he refers to them, but will be in a position to advise him upon any matters connected with educational theory and practice as they think fit and, by section 5, p. 87, *post*, the Minister will be bound to include in his annual report to Parliament details of the composition and proceedings of the Councils. In consequence of this, members of Parliament will, if they think fit, be in a position to question the Minister either upon the advice given by the Councils or upon the action which he may or may not take as a result of such advice.

(a) **"Regulations".**—*Regulations made by the Minister* under this section are, by section 112, p. 254, *post*, to be laid before Parliament and may within forty days be annulled by resolution of either House.

5. Annual Report to Parliament.—The Minister shall make to Parliament an annual report giving an account of the exercise and performance of the powers and duties conferred and imposed upon him by this Act and of the composition and proceedings of the Central Advisory Councils for Education. [200]

NOTE

This section replaces section 163 of the Education Act, 1921; 7 Halsbury's Statutes 210. It will be noted that the Minister is to include in his Annual Report information as to the composition and proceedings of the Central Advisory Councils to be established under section 4, p. 86, *ante* (see the notes to that section).

PART II

THE STATUTORY SYSTEM OF EDUCATION

LOCAL ADMINISTRATION

6. Local education authorities.—(1) Subject to the provisions of Part I of the First Schedule (a) to this Act, the local education authority (b) for each county (c) shall be the council of the county, and the local education authority for each county borough shall be the council of the county borough. [201]

(2) The local administration of the statutory system of public education (d) shall be conducted in accordance with the provisions of Parts II and III of the said Schedule (e). [202]

(3) All property (f) which immediately before (g) the date of the commencement of this Part of this Act was held (h) by the council of any county district (i) solely or mainly (j) for the purposes of any functions exercisable by them under the Education Acts, 1921 to 1939 (k), and all rights and liabilities (l), whether vested or contingent (m), to which any such council were entitled or subject immediately before the said date by

reason of the exercise of such functions shall save as may be otherwise directed (n) by the Minister under the powers conferred on him by this Act be transferred (o) by virtue of this section to the local education authority for the county (p) in which the county district is situated [203]

(4) All officers (q) who immediately before the said date were employed by the council of any county district solely or mainly (r) for the purposes of any such functions as aforesaid shall by virtue of this section be transferred to and become officers of the local education authority for the county in which the county district is situated, and shall be employed by that authority upon the terms and conditions (s) upon which they were employed by the council of the county district immediately before that date. [204]

NOTES

This section, with the remainder of Part II of the Act, comes into operation on 1st April 1945 By section 108 (1), p 250, *post*, however, the Minister is enabled, without prejudice to any powers exercisable under section 37 of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1005, to exercise, and *to authorise or require any local education authority (as defined in this* section and section 114 (1), p 255, *post*), former authority (as defined in section 114 (1), p 255, *post*), or other person or body of persons, to exercise during the period between the passing of the Act and the date on which Part II comes into operation (1st April, 1945) any functions which will, on or after that date, become exercisable by him or them under any provision of the Act, in so far as the exercise of those functions during that period is, in his opinion, necessary or expedient for securing that that Part may be brought into operation without delay or for preventing difficulties in the operation of that Part after the date aforesaid. Section 108 (2), p 250, *post*, crystallizes somewhat the general provision made by subsection (1) by requiring the Minister, in exercise of that power, to constitute any joint education boards and to secure the constitution of any education committees and sub committees and of any divisional executives which are, in his opinion, essential for the initial operation of Part II of the Act *Ministry of Education* Circular 1 (15th August, 1944) states that the Minister regards it as important that the new machinery of local administration for which this section and the First Schedule, p. 271, *post*, provide should be set up so as to be ready to function by that date, when the new local education authorities come into being.

The system of local educational administration superseded by the Act was established by the Education Act, 1902, and was based upon the division of education into the two separate fields of compulsory elementary education and voluntary secondary education The system was continued by the Education Act, 1921 ; 7 Halsbury's Statutes 130, and, subject to the amendment effected by the Education (Local Authorities) Act, 1931 , 24 Halsbury's Statutes 173, has withstood the test of more than forty years of educational development.

In the past local education authorities having powers relating to higher as well as to elementary education have been known as Part II authorities and those having elementary powers only as Part III authorities. These terms now cease to have other than an historical meaning

Under the Act of 1921 the local education authorities for elementary education were, by section 3 (1) , 7 Halsbury's Statutes 131, county borough councils, councils of boroughs whose population according to the 1901 census exceeded 10,000, councils of urban districts whose population according to the 1901 census exceeded 20,000, and county councils (excluding the area of any such borough or urban district) This general provision had effect subject to the terms of section 5, which enabled any non-county borough or urban district council having any powers or duties under the Act (by agreement with the county council and with the approval of the Board of Education) to relinquish to the county council all or any of those powers and duties

Under this system a non-county borough or urban district council could not become an elementary education authority by reason of an increase of population taking the borough or urban district beyond the limit of *10,000* or *20,000*, nor *did an authority cease to* be an elementary education authority by reason of a decrease in population, because the population limits were related specifically to the 1901 census It was, however, possible for new elementary education authorities to be created either by the grant of a charter of incorporation to an urban district whose *1901* population exceeded *10,000 but* was less than 20,000, by the extension of a borough or urban district so that the 1901 census population of the extended borough or urban district complied with the conditions set out in section 3 (1) or by the creation of a new urban district whose 1901 population exceeded 20,000 There was also the theoretical possibility that an *elementary education authority* which relinquished its powers under section 5 , 7 Halsbury's *Statutes 133, might have them returned as a result of the authority becoming a county borough* council

The first review of county districts which took place under the Local Government Act, 1929 , 16 Halsbury's Statutes 883, might have had the effect of creating a fairly considerable number of new elementary education authorities but this result was avoided by means of the Education (Local Authorities) Act, 1931 , 24 Halsbury's Statutes 173, section 1 (1) of which provided that no council of an urban district (whether a borough or not) which was not at the commencement of the Act a local education authority for the purposes of elementary education should become a local education authority unless expressly constituted as such by an Act passed after the commencement of that Act In the event, however, of two or more urban districts being united, if the council of one of them was previously an elementary education authority the council formed by the union was to be the education authority for the whole district (Education (Local Authorities) Act, 1931, proviso to section 1 (1) A consequential amendment in section 3 (1) of the Act of 1921 , 7 Halsbury's Statutes 131, was made by section 1 (2) of the 1931 Act , 24 Halsbury's Statutes 173 The Act of 1931 also had the effect of preventing an urban district council from becoming a local education authority by reason of the grant of a charter of incorporation.

At the date when the present Act was passed there were in England and Wales 62 county councils (including the London County Council), 83 county borough councils, and 1₆₉

non-county borough councils and urban district councils acting as local education authorities for elementary education. The council of the Isles of Scilly (to which special provisions applied) was also a local education authority. Under the power given by section 5 of the Education Act, 1921 ; 7 Halsbury's Statutes 133 *(replacing section* 20 of the Education Act, 1902) over a dozen non-county borough councils and urban district councils relinquished their powers as elementary education authorities to the county council.

As regards higher education, section 3 (2) of the Education Act, 1921 ; 7 Halsbury's Statutes 132, *provided that the local education authorities* should be the county and county borough councils, and the council of the Isles of Scilly, *ibid.*, section 169 (5) ; 7 Halsbury's Statutes 212. The councils of all non-county boroughs and urban districts also had certain higher education powers under the Act (section 3 (2) and 70 (2) ; 7 Halsbury's Statutes 131, 168), but their expenditure in any year out of rates was limited to the produce of a 1½d. rate (Education Act, 1921, proviso to section 70 (2) ; 7 Halsbury's Statutes 132, and Local Government Act, 1929, section 75 ; 10 Halsbury's Statutes 932. Three non-county borough councils which relinquished their elementary education functions to the county council also relinquished their higher education powers.

The White Paper on Educational Reconstruction (Cmd. 6458 of 1943) stated that the system established by the Act of 1902 was open to two serious objections. It continued (at p. 29) :—

> " In the first place an arrangement whereby in a county area some of the stages of a child's education are entrusted to one local education authority and others to another is a barrier to the establishment of a proper unity in educational organisation, the disadvantages of which have been progressively realised since the Act of 1902. It is not, therefore, surprising that body after body has recommended that the proper arrangement would be to have a system whereby all local education authorities are charged with all educational functions. The reconstruction of the educational system . . . will make such a change *inevitable*. Suitable arrangements for the transfer of a child from the primary to either a modern school or a grammar school or a technical school can only be made if the same authority is responsible for all three types of education. At present, however, modern schools are the concern of the Part III Authority ; grammar and technical schools the concern of the Part II Authority.
>
> The second defect is that the determination of the Authorities for elementary education according to criteria of population figures as they were even 40 years ago has led, as it was bound to lead in the course of time, to the most *incongruous results*. Thus, whereas Harrow Urban District, which had in 1938 an estimated population of 183,000, has no educational powers because its population in 1901 was under 20,000. Tiverton Borough, which in 1938 had an estimated population under 10,000, remains an Authority for elementary education *because in 1901 its population exceeded that figure*.
>
> These considerations suggest that any review of the units of educational administration must be informed by three principles :—
>
> (*a*) that all local education authorities should be charged with all educational functions ;
>
> (*b*) that the population of any area as it was in 1901 should not now be regarded as relevant to the question whether its council should be a local education authority ;
>
> (*c*) that however local education authorities may be constituted, there should be arrangements for preserving and stimulating local interest in education.
>
> On the basis of these principles there are two ways in which eligibility for the status of a local education authority could be determined. On the one hand, the status could be conferred on all county districts which, according to the latest census figures, had a population of not less than a prescribed figure, *e.g.*, 75,000. On the other hand, those local education authorities which at present have experience of all types of educational administration, *i.e.*, counties and county boroughs, could, subject to certain modifications . . . , be constituted as authorities with provision, in order to secure the third principle, for delegation of certain duties and powers to county districts or combinations of them.
>
> In favour of the first solution it can be said that the size and financial resources of many county districts with such a minimum population as has been suggested would be as great or greater than those of many existing counties and county boroughs. But there are serious objections to this alternative. In the first place, to determine eligibility for the status of a local education authority according to the population at a given date would sooner or later lead, owing to movements of population, to precisely those anomalies to which reference is made *(supra)*. Again the ultimate responsibility for the higher forms of education such as that given in grammar schools and major technical institutions rests more conveniently with the county authority than with the councils of county districts, since schools of these types usually serve a wider population than that of the districts themselves. In general, Government policy has been against the creation of new local education authorities, as is shown by the Education (Local Authorities) Act, 1931. . . . It is equally undesirable that full educational powers should be given to the councils either of those districts which at present have no educational powers or of those whose powers extend only to elementary education. Lastly, to create as local education authorities the councils of a substantial number of county districts would tend, particularly in some areas, to reduce the child population and the financial resources of the counties in which they are situated to an extent that would prejudice the efficiency of those counties as units of educational administration.
>
> It is accordingly proposed that in future the local education authorities shall be the councils of the counties and county boroughs only. At the same time, since certain of these councils will be unable, owing to their size or financial resources, to undertake the increased responsibilities which would be laid upon them, powers will be taken to combine for educational purposes the areas of two or more county or county borough councils where this would be conducive to efficient or economical administration or would otherwise be of national or local advantage ".

The arrangements for the preservation and stimulation of local interest in education, referred to as the third principle guiding the review of the administrative system, are implemented in Part III of the First Schedule, p. 275, *post*.

Sub-section (1) and Part I of the First Schedule to the Act replace section 3 (1) and (2) and section 5 of the Education Act, 1921 ; 7 Halsbury's Statutes 132, 133, and the Education (Local Authorities) Act, 1931 ; 24 Halsbury's Statutes 173.

Sub-section (2) and Part II of the First Schedule to the Act replace section 4 of the Education Act, 1921 ; 7 Halsbury's Statutes 132. Part III of the First Schedule is entirely new.

Sub-sections (3) and (4) are new and consequential upon the abolition of Part III authorities as separate local education authorities, though they follow to some extent the terms of the Second Schedule to the Education Act, 1921 ; 7 Halsbury's Statutes 218, which provided for the transfer of property, etc., on the relinquishment by a local authority of its powers under section 5 of that Act.

Part II of the First Schedule (p. 273, *post*) replaces section 4 of and the First Schedule to the Education Act, 1921 ; 7 Halsbury's Statutes 132, 217, with regard to the constitution of education committees of local education authorities. Part III of the First Schedule (p. 275, *post*) is entirely new and represents an attempt " to evoke and maintain local interest in education in the county districts " (Explanatory Memorandum to the Bill, Cmd. 6492 of 1943, p. 3) though the former Part III authorities in general did not when the Bill was before Parliament regard the proposed new system as adequate to maintain local interest, at least in their own areas. The original proposal (White Paper on Educational Reconstruction, Cmd. 6458 of 1943, p. 30) was to create " district committees " in each county, to be entrusted with the general duty of keeping the needs of their respective areas under review and of making recommendations to the county education committee, but this meagre return for the loss of their autonomy caused so great a storm of protest from the Part III authorities that when the Bill was presented to the House of Commons district committees had become what in fact differed little but went by the high sounding title of " divisional executives ". Some concessions were, however, made on the committee stage of the Bill. See further the notes on the First Schedule, p. 271, *post*.

The immediate effect of the abolition of Part III education authorities by this section and the First Schedule may in certain circumstances be to impose a heavier burden upon the ratepayers, usually in the area of the former Part III authority, but occasionally in the county area. Section 110 and the Seventh Schedule, pp. 253 and 288, *post*, make special provision to enable the Minister to adjust variations in the incidence of rates caused by the coming into operation of Part II of the Act.

As regards the grants which the Minister is required to make to local education authorities in aid of the educational services (other than those relating to medical inspection and treatment) provided by such authorities, see section 100 (1), p. 239, *post*, and as to the special annual grants to be paid to local education authorities in Wales and Monmouthshire (replacing those formerly payable under the Welsh Intermediate Education Act, 1889), see section 101, p. 241, *post*. Grants in respect of medical inspection and treatment under section 48, p. 179, *post*, are payable by the Minister of Health or the Minister of Education on his behalf under section 100 (2), p. 239, *post*.

(a) **" Part I of the First Schedule "**.—See p. 271, *post*, and notes. This Part provides for the establishment of a joint education board as the local education authority for the areas of two or more councils to which Part I of the Schedule applies where it appears to the Minister that this would tend to diminish expense or to increase efficiency, or would otherwise be of public advantage (First Schedule, Part I, para. 1). The councils to which Part I of the Schedule applies are county councils, county borough councils, and the council of any other borough of which the population was not less than half of the population of the county in which the borough is situated, according to the last census before the passing of the Act (First Schedule, Part I, para. 5).

(b) **" Local education authority "**.—Various provisions of the Act lay specific duties upon local education authorities, e.g., with regard to the appointment of a chief education officer (section 88, p. 225, *post*), and the establishment of education committees (Part II of the First Schedule, p. 273, *post*). It would appear that nothing in Part III of the First Schedule (p. 275, *post*) automatically passes on these obligations to divisional executives constituted under para. 2 of Part III of the Schedule or to " excepted " authorities under para. 4, neither of which are to be regarded in any way as local education authorities under the Act. There is, of course, nothing to prevent any such obligation of a local education authority from being placed upon a divisional executive or excepted authority by means of a specific provision to that effect in a scheme of divisional administration.

Section 114 (1), p. 255, *post*, also contains what appears to be a quite unnecessary repetition of the definition of " local education authority ". As to the application of the Act to London and to the Isles of Scilly, see sections 117 and 118 respectively, pp. 266 and 267, *post*.

The educational functions of former authorities are not the only functions transferred to the local education authorities under the Act. As a result of section 120 (1) (*d*) and (4), p. 268, *post*, the functions exercised by local authorities under the Children and Young Persons Acts, 1933 and 1938; 26 Halsbury's Statutes 167 ; 31 *ibid.* 365, in their capacities as local education authorities for elementary education are also transferred to the local education authorities under this Act, so that the Part III authorities thereby lose these powers also.

(c) **" County "**.—Section 114 (1), p. 255, *post*, defines the word as meaning an administrative county within the meaning of the Local Government Act, 1933, section 1 (10 Halsbury's Statutes 883) of which provides that, subject to any alteration of boundaries or the constitution of new authorities which might take effect after the passing of that Act, the administrative counties should be the administrative counties which were named in Part I of the First Schedule to that Act. As to the application of the Act to the Isles of Scilly as if they were a separate county, see section 118, p. 267, *post*.

(d) **" The statutory system of public education "**.—The whole of Part II of the Act deals with the various aspects of statutory system of education in its reorganised form, but section 7, p. 93, *post*, indicates the three stages into which the statutory system of public education is to be organised and imposes a general duty upon the local education authority to exercise its powers to that end.

(e) **" Parts II and III of the said Schedule "**.—Part II of the First Schedule, p. 273, *post*, provides for the establishment of education committees and joint education committees of local education authorities. Part III of the First Schedule, p. 275, *post*, provides for the delegation of functions of local education authorities to divisional executives and to the councils of excepted districts by means of schemes of divisional administration.

(*f*) ***" Property "***.—*The term is not defined in the Act though, in the Education Act, 1921,* it was, by section 170 (16) ; 7 Halsbury's Statutes 214, deemed to have the same meaning as in the Local Government Act, 1888, section 100 ; 10 Halsbury's Statutes 760, providing (*inter alia*) :—

"The expression 'property' includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to and out of property real and personal, including things in action, and registers, books, and documents, and when used in relation to any authority, includes any property which on the 'appointed day' belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such authority"

As to what may be transferred, see *Oldham Corporation* v *Bank of England* [1904] 2 Ch 716, 39 Digest 309, 852 (annuity)

(g) **"Immediately before the date of the commencement of this Part of this Act".** Since Part II of the Act comes into operation on 1st April, 1945 (section 119, p 267, *post*), this phrase means the 31st March, 1945

(h) **"Held".**—This presumably covers not only property owned by the council of the county district, but property held by way of lease or tenancy or even by way of loan The interpretation of this provision may give rise to difficulties Property may, for example, have been acquired for educational purposes but may be used on the material date for other purposes, on the other hand, property may have been acquired for a non educational purpose but may on the material date be used for educational purposes, and in the case of land, the use may be with or without prior appropriation under section 113 of the Education Act, 1921, 7 Halsbury's Statutes 190 Local authorities often provide, in the case of land acquired for one purpose and used, without formal appropriation, for another, for the payment of a rent by way of transfer from the accounts of one committee to the accounts of another In the case of property used for, but not appropriated to, educational purposes in respect of which a rent is charged to the education account the question will arise as to whether the local education authority will, on and after 1st April, 1945, be liable for the rent formerly charged Special provision is made in section 96 (1), p 231, *post*, in the case of certain types of properties which, though used for educational purposes, are held on trust

(i) **"County district".**—This means, in the present section, a non county borough or an urban district, since the council of a rural district was incapable under the Education Act, 1921, of possessing powers relating either to higher or to elementary education

(j) **"Solely or mainly".**—This term, which no doubt represents the best possible attempt to deal with all the various questions which may arise, is certain to give rise to a number of difficult problems, e g, what is the position with regard to offices used for educational purposes but forming a hardly divisible part of a larger suite of offices forming the local town hall Is regard to be had to the purpose for which the building *as a whole* is mainly used or merely to that part which is used for educational purposes? It is similarly possible to imagine a building used at certain times or on certain days as a school clinic and at other times or on other days as a maternity and child welfare clinic The intention of this provision is obviously to transfer only those buildings which will be required for educational purposes by the new local education authority and will no longer be required by the former authority and in case of doubt it may be a useful indication to ascertain whether the cost of upkeep has been charged against the education account, the attraction of the education grant usually ensuring that any such upkeep which may legitimately be charged to the education account is in fact so charged

(k) **"Education Acts, 1921 to 1939".**—These are —

(*a*) the Education Act, 1921, 7 Halsbury's Statutes 130,
(*b*) the Education (Institution Children) Act, 1923, *ibid* 226,
(*c*) the Education (Local Authorities) Act, 1931, 24 Halsbury's Statutes 173,
(*d*) the Education Act, 1936, 29 Halsbury's Statutes 117,
(*e*) the Education (Deaf Children) Act, 1937, 30 Halsbury's Statutes 179, and
(*f*) the Education (Emergency) Act, 1939, 32 Halsbury's Statutes 1223

In addition, section 120 (4), p 268, *post*, provides that where by virtue of this Act any functions cease to be exercisable by the council of a county district under the Children and Young Persons Acts, 1933 and 1938, 26 Halsbury's Statutes 167, 31 *ibid* 365, sub sections (3) and (4) of this section (*inter alia*) are to have effect as if they had been exercisable under the Education Acts, 1921 to 1939, this means that those provisions regarding transfer of property and officers apply also in the case of the transfer of functions under the Children and Young Persons Acts, 1933 and 1938

(l) **"Rights and liabilities".**—These words are undefined by the Act though section 170 (16) of the Education Act, 1921, 7 Halsbury's Statutes 214, gave the terms "powers", "duties" and "liabilities", as used in that Act, the same meanings as in the Local Government Act, 1888 By section 100 of that Act, 10 Halsbury's Statutes 760 —

(*a*) "powers" includes (*inter alia*) rights, and
(*b*) "the expression 'liabilities' includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose"

(m) **"Vested or contingent".**—As to what may or may not be a contingent liability, see *Morris* v *Carnarvon County Council* [1910] 1 K B 840, 19 Digest 556, 18 (dangerous door)

(n) **"Save as may be otherwise directed".**—This saving refers to section 96 (1), p 231, *post*, which enables the Minister, if he is satisfied with regard to certain types of trust property that this provision should not operate, to direct that the transfer shall be deemed not to have taken place

(o) **"Transferred".**—By section 96 (2), p 231, *post*, the Minister is authorised to determine (*inter alia*) whether any property, rights or liabilities have been transferred by virtue of the Act from a former authority (see definition in section 114 (1), p 255, *post*) to a local education authority Section 96 (3), p 232, *post*, enables the local education authority and the former authority by agreement to provide for the making of such adjustments as appear desirable as a result of any transfer under this sub section, and the agreement may, in particular, provide for payments to be made by either party Section 96 (4), p 232, *post*, gives the Minister power, subject to any agreement of the type just mentioned, to give directions to the same end which means that if the local education authority and the former authority are unable to reach agreement either may seek the aid of the Minister If on 1st April, 1945, a former authority is party to any proceedings pending with respect to any property, rights or liabilities transferred under this sub-section, the proceedings may be continued with the substitution of the local education

authority for the former authority as party thereto (section 96 (5), p 232, *post*) In the unlikely but possible event that on the date in question proceedings should be pending between the former authority and the local education authority with regard, for example, to a building jointly used, the proceedings would, presumably, automatically come to an end.

(p) **"Local education authority for the county".**—In the event of the constitution, in any particular case, of a joint education board the transfer will presumably be to the joint education board since, by virtue of the Minister's order under Part I of the First Schedule to the Act, the joint education board will be the local education authority for (*inter alia*) the county in question

(q) **"Officers".**—No definition of the term "officer" is contained in the present Act though by section 305 of the Local Government Act, 1933; 26 Halsbury's Statutes 465, the term includes a servant In the case of certain other terms used in this Act, e g, "county", "local government elector", section 114 (1), p 255, *post*, provides specifically that they are to have the same meaning as in the Local Government Act, 1933 By implication, therefore, in this case there can be no reference to the definition in the Local Government Act, 1933, or in another Act, e g, the Local Government Superannuation Act, 1937, section 40, 30 Halsbury's Statutes 415, of which defines "officer" as —

> "An employee as to whom either of the following conditions is satisfied, that is to say.—
> (*a*) that his duties are wholly or mainly administrative, professional or clerical; or
> (*b*) that his remuneration is at a rate greater than two hundred and fifty pounds per annum and that he is not an employed contributor within the meaning of the National Health Insurance Act, 1936"

It would appear, therefore, there has been an omission in the present Act, and that the term must be interpreted without reference to the Acts quoted It is at least doubtful whether servants of the former authority e g, school caretakers are transferred by virtue of the subsection, though there is little doubt in the case of teachers. It was decided in *Portsmouth Corporation* v *Smith*, [1885] 10 App Cas 364, H L; 42 Digest 666, *770*, that where a section from one Act is introduced into another it must be read in the sense in which it was used in the Act from which it was taken It is legitimate to refer to all the rest of the Act in order to ascertain what the section meant though those other sections are not incorporated. It is a reasonable assumption that this decision would apply also to the importation of a term from one Act to another, where that term is not redefined Section 148 (1) of the Education Act, 1921; 7 Halsbury's Statutes 204, authorised a local education authority to appoint "necessary officers, including teachers" In consequence the term "officer" as used in this Act may be taken to include "teacher" also

(r) **"Solely or mainly".**—Numerous officers of local authorities are employed upon more than one type of work or alternatively, though the work may be similar, it may be carried out in connection with two different services, e g, a nurse may have duties under the school medical service, as well as the maternity and child welfare service of the local authority Where 100 per cent of the salary of an officer is charged to that authority's education account no question will arise under this provision Where on the other hand an officer's duties are partly connected with the education service and partly with some other service and the salary is similarly apportioned it is a question of fact whether or not he is employed mainly on educational work If he is not, he remains in the employ of the county district council If he is, he is transferred to the local education authority for the county Section 96 (2), p. 231, *post*, provides that if any question arises as to whether any officers have been transferred by virtue of the Act from a former authority to a local education authority, the question is to be determined by the Minister This raises a number of important questions not only for the local education authority for the county and the county district council which becomes a "former authority" but for the officers concerned —

(1) the local education authority for the county will have to consider whether to make an arrangement with the former authority for the part-time use of his services or whether to make other arrangements for the discharge of the duties which he formerly carried out;

(2) if no arrangement is reached between the two authorities the former authority must
- (*a*) continue paying to the officer his former salary for reduced duties which he will perform; or
- (*b*) allocate other duties to the officer; or
- (*c*) terminate his employment and, if thought fit, offer to re-engage him at a reduced salary, in which event he will, by virtue of section 98, p 234, *post*, be entitled to claim compensation from the local education authority for the area in which the county district is situated

(3) the officer should consider carefully whether he is being properly treated under the section and should have careful regard to his rights under section 97, p 233, *post*. In the event of a question arising as to whether an officer is, under this subsection, transferred or not, it would appear that the officer, as well as the authorities concerned, will have the right to refer the question to the Minister under section 96 (2), p 231, *post*

If the officer is in fact, transferred and has not previously been solely employed for the purposes of the Education Acts, other questions arise; see note (s), *infra*

As to the transfer of officers who, on 1st April, 1945, are on war service, see section 97, p 233, *post*

(s) **"Terms and conditions".**—An officer who is transferred under this subsection must be employed by the local education authority for the county upon the same terms and conditions as were operative immediately before the transfer This refers to the officer's salary and emoluments and his conditions of service; obviously it cannot apply to his status, e g, it would not normally be possible for a chief education officer of a former authority to retain his previous status after transfer, and the compensation provisions of the Act (section 98, p 234, *post*) refer only to direct pecuniary loss which the officer may sustain by reason of the transfer It does mean, however, that an officer who had prior to the transfer unusual beneficial conditions of service, e g, relating to payment of salary in case of illness, will remain entitled to their benefit after the transfer. Similarly, an officer will after transfer be entitled to increments of salary to which he would have been entitled had the transfer not taken place If the local education authority for the county wish to bring the conditions of service of transferred officers into line with other county officers it will be necessary either to determine the officer's employment and offer re engagement or to obtain a formal acceptance of the revised conditions In the latter event it is questionable whether an officer who suffers "direct pecuniary loss" as a

result of his acceptance of the revised conditions could claim compensation under section 98 since the loss might be held not to be in consequence of the county district council ceasing to exercise educational functions The following questions also arise —

(1) whether an officer who is required to accept less beneficial sick pay conditions would subsequently be able to claim compensation in the event of illness to the extent of the difference between the sums receivable under the two sets of conditions,

(2) whether it is possible for an officer to contract out of his rights under section 98

By section 96 (3), p 232, *post*, the authorities from and to which an officer is transferred may by agreement provide for the making of adjustments in relation to their respective rights, liabilities and expenses as appear to them desirable having regard to the transfer, and such an agreement may, in particular, provide for the making of payments by either party, or by section 96 (4), p 232, *post*, the Minister may, subject to any such agreement, by directions himself provide for an adjustment Thus, in the case of an officer who had been engaged partly but not mainly on non-educational services, the former authority may agree with the local education authority for the county to retain his part-time services for that work, and the agreement may provide that the former authority shall pay for those services either directly or by means of a payment to the county authority.

There seems, however, to be one omission from the Act which may place a somewhat heavy burden upon small authorities whose educational functions are transferred under the Act. In the case of such authorities it has not been unusual for several officers to devote part of their time to educational work, e g , the town clerk may act as education officer, the borough surveyor as surveyor to the education committee, and so on, and either for part of their salaries or a proportion of the administrative cost of their departments to be charged to the education account, thus attracting grant In such event, in addition to bearing the burden of the county education rate, the authority will after the appointed day also have to bear the whole cost of the salaries of the officers concerned or, which few authorities would desire, determine their engagements and offer new appointments at lower salaries.

As regards persons who were employed by the council of a county district whose functions are transferred by this Act to the county council and to whom the Local Government Staffs (War Service) Act, 1939 , 32 Halsbury's Statutes 1118, apply, see section 97, p 233, *post*

For the purpose of the assessment of compensation under the Act, the appropriate provisions of the Local Government Act, 1933, are applied with modifications

THE THREE STAGES OF THE SYSTEM

7. Stages and purposes of statutory system of education.— The statutory system of public education (a) shall be organised in three progressive stages (b) to be known as primary education (c), secondary education (d), and further education (e) ; and it shall be the duty (f) of the local education authority (g) for every area, so far as their powers extend, to contribute towards the moral (h), mental, and physical (i) development of the community by securing that efficient education throughout those stages shall be available to meet the needs of the population of their area [205]

NOTES

This section, whilst new in terms, repeats in principle the first half of section 11 of the Education Act, 1921 , 7 Halsbury's Statutes 135 Great hopes have been expressed for the fulfilment of the new educational era which is proposed under the Act and stated in general terms in this section but a comparison with the section just referred to and an examination of the results attained from it go far to prove that nothing is gained from an Act of Parliament alone unless all concerned with its execution co-operate wholeheartedly to that end Section 11 of the 1921 Act commenced —

" With a view to the establishment of a national system of public education available for all persons capable of profiting thereby, it shall be the duty of the council of every county and county borough, so far as their powers extend, to contribute thereto by providing for the progressive development and comprehensive organisation of education in respect of their area "

The section went on to require those councils to prepare and submit to the Board of Education schemes showing how their powers and duties were to be performed, with the quoted object in view and sections 12–16 of the Act , 7 Halsbury's Statutes 135–137 (the remainder of Part II of that Act) dealt with the preparation, submission and approval of such schemes. In fact Part II of the Act of 1921 was never acted upon, for the task of making comprehensive investigations into the educational needs of the areas concerned, together with the adverse effect of the financial crises which occurred from time to time between the wars, proved to be too heavy a burden to lay upon those concerned No scheme, in fact, under Part II of the 1921 Act ever received the Board's approval

A far heavier burden now lies upon the local education authorities under the present Act and the circumstances in which the task of reconstituting the educational system are to be carried out are no less difficult than in 1921 though in the present instance the Government have attempted to lay down a partial timetable. It remains to be seen whether the present Act will be a greater success than its predecessor

(a) **" Statutory system of public education ".**—The provisions of the Act which give effect to the statutory system created by this section are contained in the remaining sections of Part II of the Act, viz sections 8–69 inclusive The reorganisation of the educational system is to be carried out, so far as primary and secondary education is concerned, in the following stages —

(1) under section 11, p 103, *post*, the local education authority is first to estimate the immediate and prospective needs of the area and, within one year or such extended period as the Minister may allow, prepare and submit to the Minister for his approval a development plan ",

(2) after the Minister has approved the development plan he is required by section 12, p. 107, *post*, to make a " local education order " giving effect to the development plan which will regulate the duties of the local education authority in relation to the matters covered by the order and which may be amended by the Minister whenever expedient.

In addition, section 41, p. 164, *post*, requires every local education authority to secure the provision of adequate facilities for further education, as defined therein, and section 42, p. 170, *post*, enables the Minister to require the local education authority to prepare and submit to him schemes of further education, the implementation of which the Minister may, after giving his approval, direct.

So far as primary and secondary education are concerned, the transitional period until the local education order for an area comes into operation is regulated by sections 31, p. 148, *post*, whilst, until the approval of a scheme of further education for the area, section 47, p. 178, *post*, safeguards existing schools and arrangements and authorises the provision of additional facilities.

(b) **" Three progressive stages ".**—In the first place, under section 35 and 108 (3), pp. 155 and 250, *post*, the raising of the school leaving age to fifteen years, proposed under the Education Act, 1936 ; 29 Halsbury's Statutes 117, but postponed by the Education (Emergency) Act, 1939 ; 32 Halsbury's Statutes 1223, in 1939, will be brought into effect on 1st April, 1945, or at most within two years after that date, but without the arrangements for exemptions made in the 1936 Act. Provision is also made in section 35, *supra*, for the further extension of the school leaving age to sixteen years as soon as possible. Ministry of Education Circular 1 (15th August, 1944) stated, however, that, in view of the possibility of securing the necessary teachers and school accommodation by 1st April, 1945, the Minister proposed to make an order under section 108 (3), *supra*, retaining the school leaving age at fourteen. It was not at that stage possible to say how long the order would remain in force, but authorities were to take it that it would not cease to have effect earlier that 1st April, 1946.

The intention expressed in the Circular was implemented on 17th August, 1944, by the Compulsory School Age (Postponement) Order, 1944, S.R. & O. 1944 No. 979.

The system by which public education has been divided into the two separate fields of elementary and higher education administered in many areas by different local authorities and in other areas by different committees of the same authority is now replaced by a single system under the control of one authority to be organised as a continuous process conducted in three progressive stages to be known as primary, secondary and further education, and a duty has been placed on every local education authority to contribute towards the mental, moral and physical development of the community by securing the provision of efficient education throughout those stages for all persons in the area capable of benefiting thereby. For the fulfilment of the duties thus laid upon them, local education authorities are required by section 11, p. 103, *post*, to make a comprehensive survey of the existing position and the present and prospective needs of their areas and to prepare and submit to the Minister development plans giving a complete picture of the proposed layout of primary and secondary schools. In respect of all such schools, whether provided schools or non-provided schools (now to be called county and voluntary schools respectively), the plan is to indicate the future organisation, the nature of the education to be given in the various types of secondary schools, and the alterations to the premises needed to bring the schools up to standards to be prescribed in Regulations of the Minister. The plan is also to contain information about the general arrangements to be made under section 57, p. 192, *post*, for the transport of pupils to and from school. Provision is made by section 12, p. 107, *post*, for the Minister, when he has approved the development plan, to make an education order for the area which will specify the steps which the authority is required to take by way, amongst other things, of maintaining existing schools, improving existing schools and providing new schools, and will contain a time-table to which the authority will be required to conform in taking these steps.

The parent's duty is no longer confined to causing his child to be efficiently instructed in the three R's ; under section 36, p. 157, *post*, he is to cause his child to receive efficient full-time education suitable to the child's age, ability and aptitude.

(c) **" Primary education ".**—By section 114 (1), p. 255, *post*, " primary education " has the meaning assigned to it by section 8 of the Act, and in section 8 (1) (*a*), p. 97, *post*, it is defined as " full time education suitable to the requirements of junior pupils ", " junior pupil " being defined by section 114 (1), *supra*, as " a child who has not attained the age of twelve years " and " child ", by the same sub-section, as " a person who is not over compulsory school age ". By section 35, p. 155, *post*, the lower limit of " compulsory school age " continues to be five years, but no lower limit of age is imposed by the Act upon voluntary school attendance and, in fact, section 8 (2) (*b*), p. 97, *post*, requires every local education authority, in fulfilling its duty under the section of securing that there are sufficient primary schools in the area, to have regard to the need for securing that provision is made for pupils under five by the provision of nursery schools or nursery classes, nursery schools being defined by section 9 (4), p. 100, *post*, as primary schools which are used mainly for the purpose of providing education for children who have attained the age of two years but have not attained the age of five years.

As regards children under five years of age, the White Paper on Educational Reconstruction (Cmd. 6458 of 1943, at p. 8) states :—

> " It is now considered that the self-contained nursery school, which forms a transition from home to school, is the most suitable type of provision for children under five. Such schools are needed in all districts, as even when children come from good homes they can derive much benefit, both educational and physical, from attendance at a nursery school. Moreover, they are of great value to mothers who go out to work, and also to those who need relief from the burden of household duties combined with the care of a good family. It is, however, in the poorer parts of the large cities that nursery schools are especially necessary. The authors of " Our Towns ", in describing the conditions which were brought to light by the evacuation of 1939, said that nothing had impressed them so often or so deeply as the need to multiply these schools in the poor quarters of the towns, from which they should spread and be provided for the children of all parents who desire to use them. There is no doubt of the importance of training children in good habits at the most impressionable age and of the indirect value of the nursery school in influencing the parents of the children. There is equally no doubt of the incalculable value of the schools in securing medical and nursing care, and the remedial treatment of defects which may be difficult to eradicate if they are left untreated until the child enters school in the ordinary way at the age of five. Though it is not proposed that local education authorities should cease to have the power

of providing for children from three to five by means of nursery classes in infants' schools, it is hoped that new provision for children under five will be mainly in nursery schools which, in addition to providing a more suitable environment for young children, are nearer to the homes than large infants' schools and give less opportunity for the spread of infectious diseases. While the nursery school will normally provide for children between the ages of two and five, children who are not yet ready for transfer to the infants' school can be retained till a later age ".

As regards the provision to be made for infants and juniors, the White Paper continues :—

" *It is generally accepted that, wherever numbers make it possible, there should* be separate schools for infants and juniors respectively, because of the different methods of approach appropriate to the training of the younger and older children in the primary stage. This principle will be observed in considering the Local Education Authorities' development plans, which will also make provision for the new schools and for the improvements necessary in the provision of existing schools in order that they may offer the space, facilities and amenities suitable for the full mental, social and physical development of young children. The reform of the system of secondary education and the adoption of other arrangements for the classification of the children at eleven and subsequently, will go a long way towards enabling the junior schools to devote themselves to their proper task. It is further an essential element in the proposals to secure a progressive reduction in the size of classes in infants' and junior schools, as the supply of teachers and buildings permits ".

(d) " **Secondary education** ".—Section 114 (1), p. 255, *post*, gives to the term the meaning assigned to it by section 8 of the Act, and section 8 (1) (*b*), p. 97, *post*, defines it as " full-time education suitable to the requirements of senior pupils, other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education ", " senior pupil " being defined by section 114 (1), *supra*, as " a person who has attained the age of twelve years but has not attained the age of nineteen years ". Since, by section 35, p. 155, *post*, the upper limit of " compulsory school age " is fixed for the time being at fifteen years, subject to postponement under section 108 (3), p. 250, *post*, and is to rise at a later date to sixteen years, secondary education may provide for the education of persons who have passed the age at which they are compelled to attend school. Though the system of public education is to be a single continuous system, section 8 (2) (*a*), p. 97, *post*, requires every local education authority, in securing the provisions of sufficient schools, to have regard to the need for securing that primary and secondary education are provided in separate schools. It should be noted that the term " secondary education " does not include a full-time education which is provided for senior pupils over compulsory school age under a scheme relating to further education made under section 42 of the Act (see p. 170, *post*).

In relation to secondary education, the White Paper on Educational Reconstruction (Cmd. 6458 of 1943, at pp. 9–10) gives the following valuable exposition of the Government's views :—

" *At about the age of eleven comes the change from the junior to the senior stage.* At present all children of the appropriate age and standard enter for the special place examination and from what has been said previously, it is clear that there is urgent need for reform. Accordingly, in the future, children at the age of about eleven should be classified, not on the results of a competitive test, but on an assessment of their individual aptitudes largely by such means as school records, supplemented, if necessary, by intelligence tests, due regard being had to their parents' wishes and the careers they have in mind. Even so, the choice of one type of secondary education rather than another for a particular pupil will not be finally determined at the age of eleven, but will be subject to review as the child's special gifts and capacities develop. At the age of thirteen, or even later, there will be facilities for transfer to a different type of education, if the original choice proves to have been unsuitable. The keynote of the new system will be that the child is the centre of education and that, so far as is humanly possible, all children should receive the type of education for which they are best adapted.

If this choice is to be a real one, it is manifest that conditions in the different types of secondary schools must be broadly equivalent. Under present conditions the secondary school enjoys a prestige in the eyes of parents and the general public which completely overshadows all other types of school for children over eleven. Inheriting as it does a distinguished tradition from the old English Grammar School it offers the advantages of superior premises and staffing and a longer school life for its pupils. Since 1902, when local education authorities were first empowered to provide or aid secondary education, there has been a rapid expansion. In 1904 there were 86,000 pupils ; to-day there are 514,000, of whom considerably more than half are in schools provided by local education authorities. The success of the schools in dealing with this extension has been remarkable. The traditional curriculum has been widened and adapted to meet the ever-increasing variety of demands and, helped by the introduction in 1917 of the School Examinations system, an education has been evolved which in the main meets the needs of the more promising pupils. But in spite of this success, the schools are facing an impossible task. An academic training is ill-suited for many of the pupils who find themselves moving along a narrow educational path bounded by the School certificates and leading into a limited field of opportunity. Further, too many of the nation's abler children are attracted into a type of education which prepares primarily for the university and for the administrative and clerical professions ; too few find their way into schools from which the design and craftsmanship sides of industry are recruited. If education is to serve the interests both of the child and of the nation, some means must be found of correcting this bias and of directing ability into the field where it will find its best realisation.

Compared with the grammar schools the senior schools have a recent history. Growing originally out of the upper forms of elementary schools, they received an impetus from the new emphasis on advanced instruction given in section 20 of the Education Act, 1921, and from the recommendations of the Hadow Report. To-day they are one of the main elements of post-primary education. Lacking the traditions and privileged position of the older grammar school *they have less temptation to be " at ease in Zion ". Their future is their* own to make, and it is a future full of promise. They offer a general education for life, closely related to the interests and environment of the pupils and of a wide range embracing the literary as well as the practical, e.g., agricultural, sides. In many areas admirable examples exist of fully developed senior schools, but they are still too few in number. The

further advance of schools of this type depends on a longer school life for the pupils, a more complete reorganisation, better buildings and amenities, and a more generous scale of staffing

Junior technical schools came into being in 1905 and their success has been remarkable Planned to give a general education associated with preparation for entry to one or other of the main branches of industry or commerce they have grown up in close relation to local needs and opportunities of employment But their progress in numbers has been comparatively slow and their chances of attracting the most able children *vis a vis* the grammar schools have been adversely affected by the fact that they normally recruit at the age of thirteen With altered conditions, and with a more rapid development in the future, they hold out great opportunities for pupils with a practical bent

Such, then, will be the three main types of secondary schools to be known as grammar, modern, and technical schools *It would be wrong to suppose* that they will necessarily remain separate and apart Different types may be combined in one building or on one site as considerations of convenience and efficiency may suggest In any case the full interchange of pupils from one type of education to another must be facilitated

A particular problem arises in respect of the class of school known as the Direct Grant secondary school *These schools, of which there are at the present time 232, exercised an* option in 1926 in favour of capitation grant direct from the Board in preference to receiving their financial aid through the local education authorities *The list* includes a wide variety of schools ranging from those schools which are an integral part of the local provision to those which, to a considerable degree, have non local connections It is not possible to reach a *conclusion here and now about the future of these schools as a class Some of them will no* doubt be attracted by the financial provisions applicable to *voluntary* schools, in any case a number of them fall within the scope of the inquiry of the Fleming Committee, the report of which may be expected to have an important bearing on the problems Meantime the postponement of a decision on the future of this group of schools *will in no way prejudice* the general reconstruction of secondary education described in the preceeding paragraphs

In one direction a new departure may be looked for. Hitherto, apart from the provision made at certain country grammar schools for pupils from remote homes, boarding education has been restricted, either to those children whose parents are able to send them to the public schools or to children who have to be removed from their homes because they are *destitute, defective,* or delinquent There is no reason why the benefits of a boarding education should be thus limited, and it is widely held that such facilities should be extended within the ambit of the state system. This need not mean the building of a large number of new boarding schools since there is likely to be a surplus of accommodation that can be used for this purpose after the war The whole question of boarding education is at present under consideration by the Fleming Committee "

The Report of the Committee on Public Schools (the Fleming Committee) was published in July, 1944, and is a document of the first importance, not only to the *Public Schools themselves,* but to the whole system of secondary education Because of the definition of " public school " used in the terms of reference, the Committee was enabled to deal with a variety of matters having direct connection with the system contemplated under this section, and a careful examination of the Report and all its implications is essential to the proper consideration of the development of the statutory system by local education authorities under the Act

It is in terms of this wider conception of secondary education outlined in the foregoing *quotation from the White Paper, that this Act has been cast The school leaving age is to be* raised (sections 35 and 108 (3), pp. 155 and 250, *post*) A duty has been placed on local education authorities to provide such variety of instruction as may be desirable in view of the different ages, abilities and aptitudes of the pupils and the different periods for which they may be expected to remain at school (section 8 (1), p 97, *post*) Power has been given to authorities to provide, maintain and assist boarding schools and hostels,- where these are found to be necessary or desirable (sections 8 (2) (*d*) and 9 (1), pp 97 and 100, *post*)

The intentions of the Ministry of Education are that reorganisation shall be completed, and the conditions in the Modern Schools assimilated to those in the existing secondary schools, in such matters as standards of accommodation and the size of classes All types of secondary schools are to be conducted under a single code of regulations, as recommended in the Spens Report, instead of under separate regulations as at present Lastly, the prohibition of fees is extended to all secondary schools for the maintenance of which the local education authorities are responsible (section 61 (1), p *196, post*), *though* provision is made (sections 50 (1) and 61 (2), pp. 184 and 196, *post*) for boarding fees to be charged in appropriate cases

The White Paper (*supra*) continues —

" But laws cannot build better human beings and it is not the machinery of education so much as its content that will count in the future Already in one direction a start has been made The curriculum of secondary schools, and especially that of the grammar schools, will be the subject of a report by the *Norwood Committee Public* opinion will, undoubtedly look for a new approach to the choice and treatment of school subjects after the war. In particular consideration must be given to a closer relation of education in the countryside to the needs of agricultural and rural life and, more generally, to creating a better understanding between the people of the town and of the country A new direction in the teaching of history and geography and modern languages will be needed to arouse and quicken in the pupils a livelier interest in the meaning and responsibilities of citizenship of this country, the *Empire and of the world abroad Education in the future must be a process of gradually* widening horizons, from the family to the local community, from the community to the nation, and from the nation to the world ".

The Report of the Norwood Committee was published in June, 1943, under the title " Curriculum and Examinations in Secondary Schools ".

(e) **" Further education ".**—By section 114 (1), p 255, *post*, " further education " is given the meaning assigned to it by section 41 of the Act, p. 164, *post*, that is '—

" (*a*) part time education colleges for young persons who are not in full-time attendance at any school or other educational institution ,

, (*b*) full-time and part-time education in technical, commercial and art subjects for persons over compulsory school age , and

(*c*) leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose ".

" Young person " is defined by section 114 (1), *supra*, as a person over compulsory school age who has not attained the age of eighteen years. Thus, though the county colleges referred to in sub-para. (*a*) of the definition are intended only for young persons under eighteen years of age, there is no upper age limit in the case of other forms of further education.

The general note to section 41, p. 164, *post*, deals with the subject in greater detail.

(*f*) " **It shall be the duty** ".—As to the enforcement of this and other duties imposed by the Act, see section 99, p. 237, *post*. It may be argued, in view of the words " so far as their powers extend ", which appear later in the section, that the Minister's powers of compulsion under section 99, *supra*, extend even to cases where the terms of a particular provision in the Act are hereby permissive, if it can properly be said that the exercise of those powers is necessary for the purpose of " securing that efficient education throughout those stages shall be available to meet the needs of the population " of an authority's area. In fact, section 68, p. 205, *post*, which was added to the Bill by the House of Lords, makes this even clearer by enabling the Minister to give directions to the local education authority whenever he is of opinion that the authority has acted or proposes to act, unreasonably, not only in connection with the performance of a duty imposed by or under the Act, but even in relation to the exercise of a power.

(*g*) " **Local education authority** ".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*, and the notes thereto. Sections 117 and 118, pp. 266 and 267, *post*, deal with the application of the Act to London and the Isles of Scilly respectively.

(h) " **Moral** ".—The duty to contribute towards the moral development of the community in the way required by the section implies that the duties of the local education authority will be regarded as including the provision of sex education.

(i) " **Physical** ".—The provisions of the Physical Training and Recreation Act, 1937; 30 Halsbury's Statutes 712, are in part repealed (section 121, p. 270, *post*, and the Ninth Schedule, p. 294, *post*) and replaced by the Act. See, in particular, section 53, p. 187, *post*, which deals (*inter alia*) with the provision of facilities for recreation and physical training.

PRIMARY AND SECONDARY EDUCATION

Provision and Maintenance of Primary and Secondary Schools

8. Duty of local education authorities to secure provision of primary and secondary schools.—(1) It shall be the duty (a) of every local education authority (b) to secure that there shall be available for their area (c) sufficient schools (d)—

(*a*) for providing primary education (e), that is to say, full-time education (f) suitable to the requirements of junior pupils (g); and

(*b*) for providing secondary education (h), that is to say, full-time education suitable to the requirements of senior pupils (i), other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education (k);

and the schools available for an area shall not be deemed to be sufficient unless they are sufficient in number, character (l), and equipment (m) to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities, and aptitudes (n), and of the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their respective needs. [206]

(2) In fulfilling their duties under this section a local education authority shall, in particular, have regard—

(*a*) to the need for securing that primary and secondary education are provided in separate schools (o);

(*b*) to the need for securing that provision is made for pupils who have not attained the age of five years (p) by the provision of nursery schools (q) or, where the authority consider the provision of such schools to be inexpedient, by the provision of nursery classes (r) in other schools;

(*c*) to the need for securing that provision is made for pupils who suffer from any disability of mind or body by providing, either in special schools (s) or otherwise (t), special educational treatment (u), that is to say, education by special methods appropriate for persons suffering from that disability; and

(*d*) to the expediency of securing the provision of boarding accommodation (x), either in boarding schools or otherwise, for pupils for

whom education as boarders is considered by their parents and by the authority to be desirable:

Provided that paragraph (*a*) of this sub-section shall not have effect with respect to special schools. [207]

NOTES

The duty which was imposed upon local education authorities for elementary education by section 17 of the Education Act, 1921; 7 Halsbury's Statutes 137, to maintain all public elementary schools in their areas which were necessary and to provide such additional elementary school accommodation as the Board of Education considered necessary, and so much of the powers to supply or aid higher education as related to secondary education, as defined in this section, are replaced by subsection (1) of this section. In view, however, of the fundamental changes in the public educational system which are to result from the Act the whole section may almost be regarded as new.

The present section does not deal with staffing matters nor, in fact, is the standard of staffing anywhere laid down in the Act; see section 34, p. 154, *post*. No doubt the Minister will take steps progressively to reduce the size of school classes by means of the wide powers which are conferred on him, e.g., by sections 10, p. 103, *post*, and 100, p. 239, *post*. The position naturally depends upon the adequacy of the supply of school premises and of teachers; as to the latter, see section 62, p. 198, *post*.

(a) "**It shall be the duty**".—The general duty to secure that sufficient schools for the area are available is qualified by subsection (2) and by section 12, p. 107, *post*. It should be noted that the local education authority is not itself required to provide all the schools required, but to secure that they are available. As to the powers of the Minister in the event of default by the local education authority, see section 99, p. 237, *post*. The exercise and performance of all powers and duties conferred and imposed on the Minister and upon local education authorities by the Act are subject to the guiding principle imposed by section 76, p. 213, *post*, that so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

(b) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(c) "**Available for their area**".—The duties of a local education authority do not extend to require the authority to secure the provision of schools for children or young persons from outside the area of the authority, even though it may be convenient for a child or young person to attend a school in an area other than that in which he lives. Section 103, p. 248, *post*, however, provides that where this does happen the local education authority providing the education shall be entitled, by making a claim within the prescribed period, to recover the cost thereof from the authority in whose area the guardian (as defined in sub-section (4) thereof) of the child or young person resides. Before a child from outside the area is admitted, however, care should be taken to ascertain whether there is a sufficient reason therefor (proviso to sub-section (1) thereof). Disputes arising under section 106, *supra*, are to be determined, under section 67, p. 203, *post*, by the Minister.

(d) "**Sufficient schools**".—See the definition of the term "school" in section 114 (1), p. 255, *post*. If in spite of compliance with this duty a child or young person is by reason of extraordinary circumstances unable to attend school for the purpose of receiving primary or secondary education, the local education authority may, with the approval of the Minister, make special arrangements for him to receive such education otherwise than at school (section 56, p. 191, *post*). As to the position of schools which by reason of war damage or for other reasons connected with the war have ceased to be used as schools, see section 114 (7), p. 258, *post*.

(e) "**Primary education**".—See note (c) to section 7, p. 94, *ante*.

(f) "**Full-time education**".—This term is nowhere defined in the Act, but section 23 (3), p. 134, *post*, provides that the power to control the secular instruction in schools given by sub-sections (1) and (2) of that section includes power (*inter alia*) to determine the times at which the school session is to begin and end on any day, to determine the times at which the school terms are to begin and end and to determine the school holidays.

(g) "**Junior pupils**".—The term "junior pupil" is defined by section 114 (1), p. 255, *post*, as "a child who has not attained the age of twelve years", and "child", by the same sub-section, as "a person who is not over compulsory school age". See also sub-section (5) of that section with respect to the time at which a person is to be deemed to attain any particular age.

(h) "**Secondary education**".—See note (d) to section 7, p. 95, *ante*.

(i) "**Senior pupils**".—The term "senior pupil" is defined by section 114 (1), p. 255, *post*, as "a person who has attained the age of twelve years but has not attained the age of nineteen years". See also sub-section (5) of that section with respect to the time at which a person is to be deemed to attain any particular age.

(k) "**Further education**".—See sections 41–47 inclusive, pp. 164 to 178, *post*, and note (e) to section 7, p. 96, *ante*.

(l) "**Character**".—The duty to secure adequate provision of primary and secondary schools covers the provision of nursery schools (sub-section (2) (*b*)), special schools for children suffering from disability of mind or body (sub-section (2) (*c*)), and, where circumstances make it desirable, boarding schools or boarding accommodation (sub-section (2) (*d*)). The notes to section 7, p. 93, *ante*, refer to this question in some detail.

(m) "**Equipment**".—The Act makes no attempt to limit the scope of this term.

(n) "**In view of their different ages, abilities and aptitudes**".—Section 36, p. 157, *post*, imposes a duty upon the parent of every child of compulsory school age to cause him to receive efficient full-time education suitable to his age, ability and aptitude. The Government's policy with regard to the provision of suitable education for all children is given in some detail in notes (c) and (d) to section 7, p. 94, *ante*.

(o) "**Separate schools**".—Nothing in the definition of "school" in section 114 (1), p. 255, *post*, gives any assistance in determining what physically constitutes a school, e.g., it is

not specifically stated whether separate junior and senior departments constitute separate schools or not, though some assistance is given by section 114 (3), p. 258, *post*, which deals with the position existing before reorganisation is completed. The proviso to this sub-section states that where primary education in a school providing both primary and secondary education is provided in a separate junior or preparatory department the Minister may direct that the school shall for the purposes of the Act be deemed to be a secondary school. In this case the use of the word "school" as covering both departments may be regarded as some evidence that such departments are not separate schools. In the definition of "elementary school" in section 170 (1) of the Education Act, 1921; 7 Halsbury's Statutes 212, the expression covered a "school or department of a school". Furthermore, in section 15 of the Education Act, 1936; 29 Halsbury's Statutes 128, "school" was defined as including a separate department of a school. Since these definitions have been dropped in the present Act it may be argued with some weight that the separation of primary and secondary education in separate departments is not a sufficient compliance with the requirement to secure that they are provided in separate schools. It was, however, decided in *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364; 42 Digest 666, *760*, that where a section from one Act of Parliament is introduced into another, it must be read in the sense in which it was used in the Act from which it was taken. If this decision may be taken as applying also to terms transferred from one Act to another, and it is reasonable to assume that it may, a separate department of a school may for the purposes of this Act be regarded as a separate school. It will be noted that by the proviso to the subsection the duty to provide separate schools for primary and secondary education does not apply to special schools. Until the local education order comes into operation in any particular area, section 31, p. 148, *post*, makes special provision with regard to and for the purpose of expediting the separation of primary and secondary schools.

(p) **"Attained the age of five years".**—As to the time of attaining any particular age, see section 114 (5), p. 258, *post*.

(q) **"Nursery schools".**—Section 21 of the Education Act, 1921; 7 Halsbury's Statutes 140, enabled local authorities for elementary education to provide nursery schools, but the present section imposes a duty upon local education authorities to provide nursery schools or nursery classes though, since attendance at school below the age of five is not compulsory, the duty will only extend to the provision of sufficient accommodation for those children below compulsory school age whose parents desire to make use of it. The term is defined by section 9 (4), p. 100, *post*, as "schools which are used mainly for the purpose of providing education for children who have attained the age of two years but have not attained the age of five years". Section 11 (2) (*e*), p. 104, *post*, requires that the development plan shall give particulars of the arrangements made and proposed to be made by the authority for meeting the needs of pupils who have not attained the age of five years. Note (c) to section 7, p. 94, *ante*, gives some indication of the Government's views regarding the future of nursery schools.

(r) **"Nursery classes".**—This term is not defined in the Act but its interpretation is not difficult having regard to the fact that primary schools may make provision for all children up to the age of twelve. As used in section 21 of the Education Act, 1921; 7 Halsbury's Statutes 140, the expression "nursery schools" included nursery classes. In practice, however, children are not accepted in nursery classes until they reach the age of three years and the Minister does not propose to vary this practice (note (c) to section 7, p. 94, *ante*).

(s) **"Special schools".**—Section 62 of the Education Act, 1921; 7 Halsbury's Statutes 165, gave to local authorities for elementary education the same powers to provide "special" schools, namely, schools for blind, deaf, defective or epileptic children, as they had to provide elementary school accommodation under Part III of the Act, *ibid.* 190. The present section imposes a duty upon local education authorities to secure the provision, for children suffering from any disability of mind or body, special educational treatment, either in special schools or otherwise. The term "special schools" is defined by section 9 (5), p. 100, *post*, as "schools which are especially organised for the purpose of providing special educational treatment for pupils requiring such treatment and are approved by the Minister for that purpose". It should be noted that there is no direct obligation upon the local education authority itself to provide a special school or schools, if that provision can be secured in any other way. If, however, the arrangements given in the development plan which are made and proposed to be made by the authority for meeting the needs of pupils who require special educational treatment (section 11 (2) (*e*), p. 104, *post*) do not satisfy the Minister, he could, in pursuance of the power given by section 11 (4), p. 104, *post*, to modify the plan, require the authority to do so. Although the power of modification relates only to the purpose of securing that proper provision is made with respect to primary and secondary schools, special educational treatment is within the scope of primary and secondary education, and it is only the obligation to make provision for primary and secondary education in separate schools which is relaxed in the case of special schools.

(t) **"Or otherwise".**—This term relates to the provision of special educational treatment otherwise than in a special school, whether or not the local education authority has itself provided a special school. Except, however, where section 56, p. 191, *post*, is applicable, by which the local education authority is enabled to make special arrangements in respect of a child who is unable to attend a suitable school, this term covers the giving of education, where education in a special school is impracticable, or where the disability is not serious, in any school maintained or assisted by the local education authority (section 33 (2), p. 151, *post*).

(u) **"Special educational treatment".**—See sections 33 (Education of pupils requiring special educational treatment), p. 151, *post*, 34 (Duty of local education authority to ascertain what children require special educational treatment), p. 154, *post*, and 38 (Additional provisions as to compulsory attendance at special schools), p. 160, *post*.

(x) **"Provision of boarding accommodation".**—Prior to the present Act the provision of boarding accommodation by local education authorities has been limited largely to special schools for defective children, and the present provision is new. The extension of secondary education under the Act to all children may, especially in rural counties, make the provision of boarding accommodation essential in many cases for children attending certain types of secondary schools, which may of necessity have to cater for children from a wide area, and it is to be hoped that the consequent burden will be adequately recognised by the Minister in the financial regulations to be made under section 100, p. 239, *post*. Local education authorities may find the results of the experiment conducted by Plymouth Corporation, the Cornwall County Council and the billeting authority at Penzance, by which boys of Devonport High School, evacuated

to Penzance in 1941, were accommodated in boarding houses instead of in billets, to be of much interest. See also note (d) to section 7, p. 95, *ante*.

9. County schools, voluntary schools, nursery schools, and special schools.—(1) For the purpose of fulfilling their duties under this Act a local education authority (a) shall have power to establish (b) primary (c) and secondary (d) schools (e), to maintain (f) such schools whether established by them or otherwise (g), and, so far as may be authorised by arrangements approved by the Minister (h), to assist (i) any such school which is not maintained by them. [208]

(2) Primary and secondary schools (j) maintained by a local education authority, not being nursery schools (k) or special schools (l), shall, if established by a local education authority or by a former authority (m) be known as county schools (n) and, if established otherwise than by such an authority be known as voluntary schools (o):

Provided that any school which by virtue of any enactment repealed by this Act (p) was to be deemed to be, or was to be treated as, a school provided by a former authority shall, notwithstanding that it was not in fact established by such an authority as aforesaid, be a county school. [209]

(3) Subject to the provisions hereinafter contained (q) as to the discontinuance of voluntary schools, every school which immediately before the commencement of this Part of this Act (r) was, within the meaning of the enactments repealed by this Act, a public elementary school (s) provided otherwise than by a former authority shall if it was then maintained (t) by a former authority be maintained as a voluntary school by the local education authority for the area in which the school is situated. [210]

(4) Primary schools which are used mainly (u) for the purpose of providing education for children who have attained the age of two years but have not attained the age of five years shall be known as nursery schools (v). [211]

(5) Schools which are especially organised for the purpose of providing special educational treatment (w) for pupils (x) requiring such treatment and are approved by the Minister for that purpose shall be known as special schools (y). [212]

(6) The powers conferred by subsection (1) of this section on local education authorities shall be construed as including power to establish maintain and assist schools outside (z) as well as inside their areas. [213]

NOTES

This section specifies the general types of primary and secondary schools which will exist under the new system which the Act creates. Under the system superseded by the Act public elementary schools were either "*provided*", that is, schools provided by the local education authority (Education Act, 1921, section 28; 7 Halsbury's Statutes 143), or "non-provided", that is, schools provided by a denominational or other voluntary body (*ibid.*, section 29; 7 Halsbury's Statutes 143).

Subsection (2) substitutes the terms "county school" for provided schools and "voluntary school" for non-provided schools. This nomenclature is applied not only to primary but also to secondary schools. Confusion between county schools under the Act and secondary schools which under the old system were also often called "county" schools should be avoided. The new term is not entirely a happy choice since it will apply also to schools provided by the local education authority of a county borough.

(a) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) "**Shall have power to establish**".—In connection with the provision of new schools and additions, etc., to existing schools maintained by local education authorities under the *Education Acts*, 1921 to 1939, and otherwise for the purposes of their powers and duties under those Acts, sections 109–115 of the Education Act, 1921; 7 Halsbury's Statutes 190, 192, authorised local education authorities to purchase or take on lease any land (section 109; 7 Halsbury's Statutes 190), either by agreement (section 110; *ibid.*) or compulsorily (section 111; ibid.). For the purpose of the purchase of land section 112; *ibid.*, applied the provisions of the School Sites Acts (i.e., the School Sites Acts, 1841, 1844, 1849, 1851 and 1852; 7 Halsbury's Statutes 274, 282, 284, 286, 287). Authorities were also authorised to appropriate land for educational purposes (section 113; 7 Halsbury's Statutes 190), or to appropriate to other purposes land acquired for educational purposes (section 114; 7 Halsbury's Statutes 191) and, with the consent of the Board of Education and subject in general to the provisions of the Charitable Trusts Acts, 1853 to 1894; 2 Halsbury's Statutes 320, 346, 363, 370, 382, 394; 6 *ibid.* 1236, to sell, lease or exchange any educational land (section 115; 7 Halsbury's Statutes 192). These

provisions remained in force even when the general powers of local authorities to acquire and deal in land were consolidated in Part VII of the Local Government Act, 1933, since by section 179 of that Act, nothing in that Part of the Act is to affect any provisions relating to the acquisition, appropriation or disposal of land by a local authority contained in any of the enactments set out in the Seventh Schedule to that Act, and the Seventh Schedule referred (*inter alia*) to the Education Acts, 1921 to 1933

As from 1st April, 1945 (with certain minor and temporary exceptions), the whole of the Education Act, 1921, including sections 109–115, *supra*, is repealed by section 121 and the Ninth Schedule, pp 270 and 294, *post* By a very few words in the Ninth Schedule, *supra*, repealing, in the Seventh Schedule to the Local Government Act, 1933; 26 Halsbury's Statutes 509, the words "The Education Acts, 1921 to 1933" the powers of local education authorities with respect to the acquisition of land are brought within the scope of Part VII of the Local Government Act, 1933, 26 Halsbury's Statutes 391, which, subject to the provisions of section 90, p. 226, *post*, applies in future to all transactions involving the acquisition of and other dealings in land for the purposes of this Act One effect of this will be that the School Sites Acts will no longer apply to local education authorities in connection with the acquisition of land and the Charitable Trusts Acts will no longer apply to such authorities in connection with its disposal The applicable provisions of Part VII of the Local Government Act, 1933, are as follows:—

(1) section 156, 26 Halsbury's Statutes 391 (provisions applicable to local authorities other than parish councils),
(2) section 157, *ibid* (power of local authorities to acquire land by agreement),
(3) section 158, *ibid.* 392 (acquisition of land in advance of requirements),
(4) section 159, *ibid.* (power of local authorities to purchase land compulsorily),
(5) section 160, *ibid* 393 (compulsory purchase of land by means of a provisional order),
(6) section 161, *ibid* 394 (compulsory purchase of land by means of an order confirmed by the Minister),
(7) section 162, *ibid*, 396 (validity of compulsory purchase orders),
(8) section 163; *ibid* (power to appropriate land),
(9) section 164, *ibid.* 397 (power to let land),
(10) section 165, *ibid* (power to sell or exchange land),
(11) section 166, *ibid* (application of capital money),
(12) section 174, *ibid* 401 (provisions as to commons and open spaces),
(13) section 175, *ibid* 402 (provisions as to land in neighbourhood of royal palaces or parks),
(14) section 176, *ibid* 403 (application of Lands Clauses Acts to purchases by agreement),
(15) section 177, *ibid* (payment of purchase or compensation money by one local authority to another),
(16) section 179, *ibid* (savings)

Section 90, p 226, *post*, provides that the application of the above-mentioned provisions is to be subject to certain modifications, consisting largely of the substitution of references to the Minister of Education for references to the Minister of Health.

(c) "**Primary**".—By section 114 (1), p 255, *post*, a primary school is defined as a school for providing primary education This definition is, however, subject to section 114 (3), *ibid*, which deals with the position existing whilst a school is used for providing both primary and secondary education and also where primary education is provided in a separate junior or preparatory department As to the meaning of primary education, see section 8, p 97, *ante*, and note (c) to section 7, p 94, *ante*

(d) "**Secondary**".—By section 114 (1), p 255, *post*, a secondary school is defined as a school for providing secondary education This definition is also subject to section 114 (3), *ibid* (see note (c), *supra*) As to the meaning of secondary education, see section 8, p 97, *ante*, and note (d) to section 7, p 94, *ante*

(e) "**Schools**".—By section 114 (1), p 255, *post*, the word "school" means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school, and, the expression "school" where used without qualification includes any such school or all such schools as the context may require.

(f) "***Maintain***".—By section 114 (1), p 255, *post*, the term "maintain" in relation to any school is given the meaning assigned to it by section 114 (2), *ibid* As to the powers of the Minister in the event of default by the local education authority in the discharge of its duties relating to the maintenance of a voluntary school, see section 99 (3), p 237, *post*

(g) "**Whether established by them or otherwise**".—The local education authority's general power to establish primary and secondary schools is given by this section Voluntary schools, which, by sub section (2), are primary or secondary schools (other than nursery or special schools) maintained but not established by a local education authority or a former authority, may be any one of three types (section 15, p. 113, *post*) Schools which before 1st April, 1945, were "non-provided" public elementary schools maintained by a former authority (i e. any local education authority under an Act repealed by this Act) automatically become voluntary schools under the Act and the duty of maintenance is transferred from the former authority to the local education authority (sub section (3) of this section) Apart from the provisions of this section other schools, whether or not they exist before 1st April, 1945, may become voluntary schools under section 13, p 109, *post*, if the proprietor so desires and complies with the provisions of that section.

(h) "**Arrangements approved by the Minister**".—As to the power of the Minister to hold a local inquiry, see section 93, p 229, *post*

(i) "**Assist**".—Section 114 (1), p 255, *post*, provides that this term, in relation to a school, shall have the meaning given to it by section 114 (2), *ibid* Special power to grant, with the approval of the Minister, temporary assistance in connection with the provision of accommodation for voluntary schools is given by section 109, p 252, *post*

(j) "**Primary and secondary schools**".—Provision is made by section 114 (7), p 258, *post*, with regard to schools which, by reason of war damage or for other reasons connected with the war, have ceased to be used for their primary purpose.

(k) "**Nursery schools**".—Nursery schools are defined by sub section (4) Since they are primary schools, they may be established by the local education authority (section 8 (2) (*b*),

p. 97, *ante*, imposes, in fact, a duty upon local education authorities in this connection), maintained by the authority, or assisted by the authority (sub-section 1). A nursery school maintained but not established by a local education authority or former authority is not, however, a voluntary school, and section 13, p. 109, *post*, which provides (*inter alia*) for the establishment and discontinuance of voluntary schools, and the following sections, do not apply. There is in fact *no provision made in the Act for the establishment, discontinuance, transfer, substitution or* management of a nursery school maintained but not established by the local education authority and it would therefore, appear that the correct course for an authority wishing to give financial help is to assist the school. It would, however, be possible for such a school to be maintained wholly by the local education authority if it came within the scope of section 85, p. 221, *post*. Some indication of the Government's policy with regard to nursery schools is given in note (c) to section 7, p. 94, *ante*.

(l) "**Special schools**".—Special schools are defined by sub-section (5) of this section. They may be primary or secondary schools and the duty to secure that primary and secondary education are given in separate schools does not apply to them (proviso to section 8 (2), p. 97, *ante*). The point referred to in note (k), *supra*, regarding nursery schools applies also to special schools. Section 33, p. 151, *post*, makes further detailed provision with regard to such schools.

(m) "**Former authority**".—See the definition of this term in section 114 (1), p. 255, *post*. It includes not only an authority whose functions are transferred to the county council but any authority formerly deriving educational functions from the Education Acts, 1921 to 1939.

(n) "**County schools**".—This term may for a time give rise to confusion, in view of the fact that prior to 1st April, 1945, secondary schools provided by county education authorities *have often been known as county schools. Curiously the term will now apply not only to schools* in a county but also to schools in a county borough.

(o) "**Voluntary schools**".—See note (g), supra, and section 15, p. 113, *post*.

(p) "**Any enactment repealed by this Act**".—This refers to sections 38 and 73 of the Education Act, 1921; 7 Halsbury's Statutes 151, 169, and section 10 of the Education Act, 1936; 29 Halsbury's Statutes 125.

(q) "**Provisions hereinafter contained**".—See sections 13, 14 and 16, pp. 109, 112 and 119, *post*.

(r) "***The commencement of this part of this Act***".—By section 119, p. 267, *post*, Part II comes into operation on 1st April, 1945.

(s) "**Public elementary school**".—The term was defined by section 27 (1) of the Education Act, 1921; 7 Halsbury's Statutes 142, as an elementary school conducted in accordance with the following regulations:—

"(*a*) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday School, or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs:

(*b*) the time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end or at the beginning and the end of such meeting, and shall be inserted in a time-table to be approved by the Board of Education, and to be kept permanently and conspicuously affixed in every schoolroom; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school;

(*c*) the school shall be open at all times to the inspection of any of His Majesty's inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book;

(*d*) the school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant".

By section 170 of the same Act "elementary school" was defined as:—

"(except in the case of courses of advanced instruction given in pursuance of this Act) a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction of each scholar exceed ninepence a week, or any school carried on as an evening school under the regulations of the Board of Education or a continuation school".

(t) "**If it was then maintained**".—The object of these words is to exclude from the operation of the sub-section certain non-local orphanage or charitable schools which have been called public elementary schools, the maintenance of which, but for these words, would have been placed upon local education authorities as from 1st April, 1945. The local education *authority may of course, if it thinks fit, put any schools, even those to which these words apply*, into or leave them out of a development plan.

(u) "**Mainly**".—A school does not cease to be a nursery school because it provides education for children who have attained the age of five years. The definition of nursery school in this sub-section is in fact framed to enable children to remain at the school beyond the age of five where the local education authority is of opinion that this is desirable, although on the Committee stage of the Bill the President of the Board stated that it was the general view of the Board that about the age of five a change of environment and of teaching was desirable. Whether or not a school is so used will presumably depend not only upon the age range for which the school caters but also upon the comparative numbers of children who are over and under five years of age.

(v) "**Nursery schools**".—See note (k), *supra*, and note (c) to section 7, p. 94, *ante*. Attendance at school before a child reaches the age of five is not compulsory (section 35, p. 155, *post*) but it is a duty of every local education authority under the Act to secure that provision is made for pupils who have not attained the age of five years or, where the authority considers the provision of such schools to be inexpedient, by the provision of nursery classes in other schools (section 8 (2) (*b*), p. 97, *ante*). Whilst a nursery school cannot be a county school or a voluntary school either may contain one or more nursery classes, so long as the school is not used mainly for children between two and five years of age and itself does not thereby become a nursery school.

(w) "**Special educational treatment**".—See sections 33 (education of pupils requiring special educational treatment), p 151, *post*, 34 (duty of local education authority to ascertain what children require special educational treatment), p. 154, *post*, and 33 (additional provisions as to compulsory attendance at special schools), p. 160, *post*.

(x) "**Pupils**".—By section 114 (1), p 235, *post*, "pupil" where used without qualification means a person of any age for whom education is required to be provided under the Act

(y) "**Special schools**".—See note (s) to section 8, p 99, *ante*, and note (l) to this section, *supra*.

(z) "**Outside**".—Cf the repealed section 17 (2) of the Education Act, 1921; 7 Halsbury's Statutes 138

10. Requirements as to school premises.—(1) The Minister shall make regulations (a) prescribing the standards (b) to which the premises (c) of schools (d) maintained (e) by local education authorities (f) are to conform, and such regulations may prescribe different standards for such descriptions of schools as may be specified in the regulations [214]

(2) Subject as hereinafter provided, it shall be the duty (g) of a local education authority to secure that the premises of every school maintained by them conform to the standards prescribed for schools of the description to which the school belongs:

Provided that if the Minister is satisfied with respect to any school that having regard to the nature of the site or to any existing buildings thereon or to other special circumstances affecting the school premises it would be unreasonable in that case to require conformity with the requirements of the regulations in any particular respect, he may direct (h) that the school premises shall be deemed to conform to the prescribed standards if in lieu of conforming to the requirements of the regulations in that respect they conform to such other requirements as may be specified in the direction. [215]

NOTES

This section enables the Minister to require not only that all new schools shall conform to the prescribed standards, but also that all existing schools shall be brought up to those standards, though he is given, by the proviso to subsection (2), a power of dispensation in suitable circumstances. Furthermore, the regulations themselves may be varied from time to time by the making of new regulations to suit changed circumstances. No definition is given of the word "standards", which is sufficiently wide to cover a variety of matters, including the materials to be used, accommodation to be provided and so on. "Premises" includes playing fields.

(a) "**Regulations**".—As to the making of regulations under the Act, see section 112, p. 254, *post*. By section 114 (1), p. 255, *post*, the word "prescribed" means prescribed by regulations made by the Minister.

(b) "**Standards**".—Ministry of Education Circular 1 (15th August, 1944) stated that it was shortly proposed to issue building regulations applicable to maintained primary and secondary schools. It is understood that the regulations will require (*inter alia*) the provision of adequate premises for the preparation and service of school meals. As to the exemption of school buildings from the building byelaws of the local authority, see section 63, p 200, *post*.

(c) "**Premises**".—The term is defined by section 114 (1), p. 255, *post*. As to playing fields, etc., see section 53, p 187, *post*.

(d) "**Schools**".—See the definition of "school" in section 114 (1), p. 255, *post*, which is, however, qualified by the following words of this section.

(e) "**Maintained**".—Section 114 (1), p. 255, *post*, provides that the expression "maintain", in relation to any school, has the meaning assigned to it by subsection (2) of that section.

(f) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(g) "**It shall be the duty**".—As to the enforcement of this duty, see section 99, p 237, *post*

(h) "**He may direct**".—As to the revocation or variation of any such directions, see section 111, p. 254, *post*.

11. Development plans as to primary and secondary schools.—(1) As soon as may be after the date of the commencement of this Part of this Act (a), every local education authority (b) shall estimate the immediate and prospective needs of their area, having regard to the provisions of this Act (c) and of any regulations (d) made thereunder and to the functions relating to primary and secondary education thereby conferred on them (e), and shall within one year after that date or within such extended period as the Minister may in any particular case allow, prepare and submit to the Minister a plan (in this Act referred to as a "development plan") in such form as the Minister may direct (f), showing the action which the authority propose should be taken for securing that there shall be sufficient primary (g) and secondary (h) schools (i) available for their area and the successive measures by which it is proposed to accomplish that purpose. [216]

(2) A local education authority, before submitting to the Minister the development plan for their area, shall take into consideration all schools available for providing primary and secondary education for pupils (j) in the area (k), and the development plan for the area shall :—

(*a*) specify which of the said schools the authority propose should be county primary schools, county secondary schools (l), voluntary primary schools, and voluntary secondary schools (m) respectively, and, in relation to every such school, give particulars of the proposals of the authority as to the nature of the education to be provided in the school and as to the ages of the pupils to be taught therein ;

(*b*) specify what alterations (n) are, by reason of the provisions of this Act or of any regulations (o) made thereunder, required in the premises (p) of any school proposed to be either a county school or a voluntary school, and furnish estimates of the cost of those alterations ;

(*c*) specify what additional county schools and voluntary schools (q), if any, will be required for their area ;

(*d*) include information as to any arrangements proposed to be made with respect to schools not to be maintained by the authority (r), for the purpose of helping to secure that there shall be sufficient (s) primary and secondary schools available for their area ;

(*e*) give particulars of the arrangements made and proposed to be made by the authority for meeting the needs of pupils who have not attained the age of five years (t) and of pupils who require special educational treatment (u) ;

(*f*) give particulars of the arrangements made and proposed to be made by the authority for the provision of boarding schools (w) ;

(*g*) include information as to any other measures (x) which the authority propose to take in fulfilment of their duty to secure the provision of schools for providing primary and secondary education, such as the making of general arrangements for the transport of pupils to and from school ; and

(*h*) contain such other particulars (y) of the proposals of the authority with respect to schools for providing primary and secondary education for their area as the authority think necessary, or as the Minister may require :

Provided that (z), if the local education authority are satisfied that any county school or voluntary school which is for the time being organised for the provision of both primary and secondary education ought to continue to be so organised, the development plan may make provision for its continuing to be so organised during such period as they think necessary. [217]

(3) A local education authority shall, before submitting their development plan to the Minister, consult the managers or governors (aa), or persons representing the managers or governors (bb), of all schools other than county schools, whether within or without the area of the authority, which would in the opinion of the authority be affected by the execution of the plan, and shall, after submitting the plan to the Minister, forthwith furnish to the managers or governors of every such school such particulars relating to the plan as are sufficient to show the manner in which the school would be affected by the execution thereof.

Where a development plan has been submitted to the Minister under this section, the Minister shall, if he is of opinion that no particulars or insufficient particulars of the plan have been furnished to any person (cc) who, in his opinion, would be affected by the execution of the plan, give such directions (dd) as he considers expedient for securing that sufficient particulars are so furnished. [218]

(4) After considering any objections to a development plan made to

him within the period of two months after the date on which he is satisfied that all necessary particulars have been furnished in accordance with the last foregoing subsection, and after making in the plan such modifications, if any, as after consultation with the local education authority he considers necessary or expedient for the purpose of securing that the plan makes proper provision for the immediate and prospective needs of the area with respect to primary and secondary schools, the Minister shall approve (ee) the plan, and shall give such directions to the local education authority as he considers desirable for the purpose of giving to the managers or governors of every voluntary school affected by the plan notice (ff) of the approval thereof, and otherwise for giving publicity to the plan as approved by him. [219]

(5) The approval of the development plan submitted by a local education authority shall not, of itself, affect the duties of the authority, but in so far as the Minister considers it expedient to impose duties upon the authority for the purpose of securing that effect will be given to the plan as approved by him, those duties shall be imposed by the local education order (gg) for the area made under the next following section. [220]

NOTES

Although this section is new in terms, it represents a more satisfactory version of the provisions contained in the Education Act, 1918, which were re-enacted in Part II of the Education Act, 1921; 7 Halsbury's Statutes 135, but, though in operation during the whole life of that Act, were never fully acted upon.

The work of preparing the extensive programme contemplated under this section may be summarised as follows:—

(1) "As soon as may be" after 1st April, 1945, the local education authority is to estimate—

(*a*) the immediate needs of the area; and

(*b*) the prospective needs of the area,

having regard to—

(*a*) the provisions of the Act;

(*b*) any regulations made under the Act;

(*c*) the functions relating to primary and secondary education conferred on the authority.

(2) The local education authority is then to prepare a development plan showing the action which the authority proposes should be taken for securing—

(*a*) that there shall be sufficient primary and secondary schools available for their area; and

(*b*) the successive measures by which it is proposed to accomplish that purpose.

In preparing the plan, the authority is to take into consideration all schools available for providing primary and secondary education for pupils in the area and the development plan is to contain the information specified in sub-section (2).

(3) The managers or governors of all schools (other than county schools) which would appear to be affected by the execution of the plan must be consulted.

(4) Before 1st April, 1946, or such later date as the Minister may allow, the authority must submit the development plan to the Minister.

(5) After submitting the plan, particulars showing how the school would be affected must be furnished forthwith to the managers or governors of every school referred to in paragraph (3), *supra*. Power is given to the Minister to ensure that this is done.

(6) Within two months after the Minister is satisfied that particulars have been furnished to those affected objections to the plan may be sent to him.

(7) The Minister may, after consulting the local education authority, modify the plan as he thinks necessary or expedient and, subject thereto, he is to approve the plan.

(8) Notice of the approval of the plan and publicity thereto must be given by the authority in accordance with the Minister's directions.

(9) Effect to the plan as approved will be given by a local education order to be made by the Minister under the next section.

Ministry of Education Circular 1 (15th August, 1944) reminds local education authorities that on 1st April, 1945, it will become their duty to take steps in accordance with subsection (1) of this section with a view to the preparation and submission of their development plans. The preparation of these plans, it is stated, will raise many educational issues and, for the assistance of authorities, the Minister therefore proposes to issue a memorandum of guidance on the aims and organisation of the various types of schools in the primary and secondary fields. Although the nature of the proposals embodied in development plans will naturally vary as between one authority and another, the Minister believes that it will expedite the submission and approval of those plans if they are framed, so far as practicable, on uniform lines.

For this purpose, therefore, an appropriate form is to be issued, indicating the main heads under which the plan should be set out and the particulars required.

(a) "**The commencement of this Part of this Act**".—By section 119, p. 267, *post*, Part II of the Act comes into operation on 1st April, 1945.

(b) "***Local education authority***".—*See section 6, p. 87, ante, and the First Schedule, p. 271, post.* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, *pp. 266 and 267, post.*

(c) "**Provisions of this Act**".—As to the enforcement of the duty imposed by this section, see section 99 (1), p. 237, *post*. The reference here is to the provisions of the Act in general, but the most important is contained in section 8, p. 97, *ante*, which requires every

local education authority to secure the provision of sufficient primary and secondary schools for its area.

(d) "**Regulations**".—See, in particular, sections 10, p. 103, *ante*, 33, p. 151, *post*, 49, p. 183, *post*, 100, p. 239, *post*, and 101 (Wales and Monmouthshire), p. 241, *post*, etc. In addition to the various direct powers to make regulations contained in the Act, section 114 (1), p. 255, *post*, provides that wherever the word "prescribed" appears in the Act it means prescribed by regulations made by the Minister.

(e) "**Functions relating to primary and secondary education thereby conferred upon them**".—Section 7, p. 93, *ante*, imposes a general duty upon local education authorities to secure efficient education through the stages of primary and secondary education, which are reviewed at some length in notes (c) and (d) to that section, whilst section 8, p. 97, *ante*, more specifically states the duty of the authority to secure sufficient schools for the purpose of providing education throughout those stages.

(f) "**As the Minister may direct**".—As to revocation and variation of directions, see section 111, p. 254, *post*.

(g) "**Primary**".—See note (c) to section 9, p. 101, *ante*.

(h) "**Secondary**".—See note (d) to section 9, p. 101, *ante*.

(i) "**Schools**".—By section 114 (1), p. 255, *post*, "school" means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by the local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school; and, subject to the words here qualifying the term, includes any such school or all such schools as the context may require.

(j) "**Pupils**".—By section 114 (1), p. 255, *post*, this term, where used without qualification, means persons of any age for whom education is required to be provided under the Act.

(k) "**Pupils in the area**".—In this phrase "in the area" relates to the word "pupils" and not to the earlier word "schools" in the same sentence, though this may not have been the intention of the draftsman, since sub-paragraph (*a*) requires the authority to specify which of "the said schools", i.e., the schools available, should be county primary schools, etc., and a particular available school might in fact have been established or be maintained or assisted by another authority. Nevertheless, as the section is drawn, it appears that the authority is to take into consideration the schools which are available for pupils who are in the area and not merely the schools in the area. Thus, apart from special schools, which normally serve a number of areas, it may be necessary to take into consideration schools outside the area, whether established, maintained or assisted by the authority or not (see section 9 (6), p. 100, *ante*, which enables an authority to establish, maintain or assist schools outside as well as inside its area, and replaces section 17 (2) of the Education Act, 1921; 7 Halsbury's Statutes 138), if they are available for pupils in the area. At the same time, however, if such a school is also available for the pupils of another area, it is desirable that in preparing the development plan the authority should consult the local education authority for that other area in order that agreement may be reached as to the extent to which the school is available for the pupils in each of the areas concerned. As to contributions between local education authorities in respect of children living in one area and attending school in another, see section 106, p. 248, *post*.

(l) "**County primary schools, county secondary schools**".—For the definitions of these terms, see sections 114 (1) and (3), p. 255, *post* (primary schools, secondary schools) and 9 (2), p. 100, *ante* (county schools). Note that the term "county primary schools" does not include nursery schools nor does either term include special schools. In considering these requirements the authority must have regard in particular to the requirements of section 8 (2), p. 97, *ante*.

(m) "**Voluntary primary schools, voluntary secondary schools**".—For the definitions of these terms, see sections 114 (1) and (3), p. 255, *post*, and 9 (2), p. 100, *ante*, and the last preceding note.

(n) "**Alterations**".—By section 114 (1), p. 255, *post*, this term, in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school.

(o) "**Regulations**".—This refers more particularly to regulations made under section 10, p. 103, *ante*.

(p) "**Premises**".—See the definition of this term in section 114 (1), p. 255, *post*, and the notes to section 10, p. 103, *ante*.

(q) "**Additional county schools and voluntary schools**".—Presumably the development plan will specify that any new schools required should be county schools unless, as a result of the consultations referred to in subsection (3) of this section, the authority agrees with a denominational or voluntary body that any new school or schools proposed shall be voluntary.

(r) "**Schools not to be maintained by the authority**".—This sub-paragraph requires the authority to inform the Minister of any assistance proposed to be given to any school not maintained by the authority, under the power to assist such schools given by section 9 (1), p. 100, *ante*, within the definition of the term "assist" in section 114 (1) and (2), p. 255, *post*.

(s) "**Sufficient**".—See the latter part of section 8 (2), p. 97, *ante*.

(t) "**Pupils who have not attained the age of five years**".—The duties of the authority in connection with nursery schools and nursery classes are set out in sections 8 (2) (*b*) and 9 (4), pp. 97 and 100, *ante*, and the notes thereto.

(u) "**Pupils who require special educational treatment**".—The duties of the authority in relation to the provision of special educational treatment are set out in sections 8 (2) (*c*) and 9 (5), pp. 97 and 100, *ante*, and sections 33, 34 and 35, pp. 151, 154 and 155, *post*, and the notes thereto.

(w) "**Boarding schools**".—A duty to have regard to the expediency of securing the provision of boarding accommodation, either in boarding schools or otherwise, for pupils for whom education as boarders is considered by their parents and by the authority to be desirable is imposed by section 8 (2) (*d*), p. 97, *ante*. Power to provide board and lodging otherwise than at boarding schools or colleges is given by section 50, p. 184, *post*, and as to the recovery of the cost of such provision by section 52, p. 186, *post*. Fees in respect of board and lodging at boarding schools and colleges are provided for in section 61, p. 196, *post*.

(x) "**Any other measures**".—The phrase is, in this section, qualified by the words "in fulfilment of their duty to secure the provision of schools", etc., and does not, therefore,

extend to information regarding, for example, arrangements for the medical inspection and treatment of pupils (section 48, p 179, *post*) The requirement does, however, cover information as to the proposed provision of—

(*a*) transport (section 55, p 190, *post*),

(*b*) accommodation for the provision of meals (section 49, p 183, *post*, and regulations to be made under section 10, p 103, *ante*),

(*c*) board and lodging otherwise than at boarding schools or colleges (section 50, p 184, *post*), and

(*d*) facilities for recreation and social and physical training (section 53, p. 187, *post*)

(*y*) "**Such other particulars**".—This is a general provision, designed to include any matter not specifically covered by the previous sub paragraphs, such as the provision of meals for pupils in attendance at schools not maintained by the authority (section 78 (2), p 216, *post*)

(*z*) "**Provided that**".—Notwithstanding the duty of the authority to have regard to the need for securing that primary and secondary education are provided in separate schools (section 8 (2) (*a*), p 97, *ante*), provision may be made for a school for the time being organised for the provision of both primary and secondary education to be continued as such during such period as the authority thinks necessary Although unlimited discretion is apparently given to the authority with regard to the period during which it is to continue to be so organised, the fact that provision for this is to be made in the development plan will give the Minister adequate power of control, and even where such a provision is contained in the local education order to be made by the Minister under section 12, p 107, *post*, his power of variation or revocation under section 111, p 254, *post*, is a further safeguard Until the local education order comes into operation any county or voluntary school so organised immediately before 1st April, 1945, is to be managed and conducted as if it were a primary school (section 31 (2), p 148, *post*), subject, however, to the powers of the Minister under sub section (3), *ibid*, and section 114 (3), p 258, *post* Though section 31, *supra*, ceases to apply when the local education order comes into operation, its further management as a primary or secondary school, as the case may be, will presumably be dealt with in the order

(aa) "**Managers or governors**".—Before the development plan comes into operation and afterwards until the question whether a voluntary school is to be a controlled school, an aided school or a special agreement school is determined (section 15, p. 113, *post*), the body of managers or governors of the school is to remain constituted as it was immediately before 1st April, 1945 (section 32, p 150, *post*), and this reference is to the managers or governors as so constituted

(bb) "**Persons representing the managers or governors**".—The inclusion of this phrase will enable the local education authority to consult with the diocesan education committees set up under the Diocesan Education Committees Measure, 1943, 36 Halsbury's Statutes 88, with whom, under the Measure, the managers of church schools are also bound to consult before making any arrangement with the Board of Education or the local education authority with regard to the school

(*cc*) "**Any person**".—*This phrase is considerably wider than that used earlier in this* sub-section, for it is at least arguable that the parent of every child in attendance at or likely to attend a school in the authority's area would be affected by the plan

(dd) "**Directions**".—Any such directions may be varied or revoked under section 111, p 254, *post*

(ee) "**Approve**".—Before approving the plan, the Minister may, under section 93, p 229, *post*, cause a local inquiry to be held As provided in sub section (5), the Minister's approval to the development plan does not of itself impose any obligation upon the authority, this being carried out by means of a local education order to be made by the Minister under section 12, p 107, *post*

(ff) "**Notice**".—Whilst section 113, p 254, *post*, applies where a notice is required to be *served* upon a person, and this sub-section deals with the *giving* of notice, it is desirable that the procedure outlined in that section should here be followed in complying with any directions given by the Minister See, however, the Interpretation Act, 1889

(gg) "**Local education order**".—By section 114 (1), p 255, *post*, the term means an order made by the Minister under section 12 of the Act, p 107, *post* See sections 12 (2) and (3), pp 107 8, *post*, and 111, p 254, *post*, as to the amendment, revocation and variation of such an order The transitional provisions contained in section 31, p 148, *post*, apply with respect to the separation of primary and secondary schools until the local education order for the area comes into operation

12. Local education orders with respect to primary and secondary education.—(1) As soon as may be after approving the development plan (a) for the area of any local education authority (b), the Minister shall make an order to be called the local education order (c) for the area specifying the county schools (d) and voluntary schools (e) which it is the duty of the authority to maintain (f), and the order shall, to such extent as the Minister considers desirable, define the duties of the authority with respect to the measures to be taken by the authority for securing that there shall be sufficient (g) primary and secondary schools (h) available for their area (i), and shall make provision as to which of the schools maintained or assisted (k) by the authority for providing primary and secondary education (l) shall be primary schools and secondary schools respectively and as to which of them, if any, shall, for the time being, be organised for the provision of both primary and secondary education (m) [221]

(2) The local education order for every area shall continue to regulate the duties of the local education authority (n) in respect of the matters therein mentioned and shall be amended (o) by the Minister whenever, in

his opinion, the amendment thereof is expedient by reason of any change or proposed change of circumstances

Provided that, before amending the local education order for any area in such manner as to vary the duties of a local education authority in any respect not either provided for by the development plan approved for the area or by proposals approved by him or occasioned by the discontinuance of a voluntary school (p) under the provisions hereinafter contained relating to those matters respectively, the Minister shall give to the local education authority, and to the managers, governors or other proprietor (q) of any school which, in his opinion, would be affected by the amendment, notice (r) of the amendment proposed to be made and shall consider any objections made to him by the authority or by such managers, governors or proprietor within two months after the service of the notice [222]

(3) If a local education authority inform the Minister that they are aggrieved by an order or by an amendment of an order made under this section the order or amendment shall be laid before Parliament (s) as soon as may be thereafter and if either House of Parliament within the period of forty days beginning with the day on which any such order or amendment is laid before it resolves that the order or amendment be annulled the order or amendment shall cease to have effect but without prejudice to anything previously done thereunder or to the making of any new order or amendment.

In reckoning any such period of forty days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days [223]

NOTES

After the development plan for the area has been prepared by the local education authority and approved by the Minister under section 11, p 103, *ante*, the Minister is required by this section, which is new in terms, to make an order to be called the local education order for the area for the following purposes —

(1) specifying the county schools and voluntary schools which the authority is to maintain,

(2) defining the measures to be taken by the authority, to such extent as the Minister thinks desirable, for securing that there shall be sufficient primary and secondary schools available for their area,

(3) providing which of the schools maintained or assisted by the authority shall be primary and secondary schools respectively, and which, if any, are for the time being to be organised for the provision of both primary and secondary education

Although the section is new in terms, under section 15 (1) of the Education Act, 1921; 7 Halsbury's Statutes 136, when a scheme made under Part II of that Act by a local education authority received the approval of the Board of Education it became the duty of that authority to give effect to the scheme. As in the case of sub section (3) of this section in the event of disagreement between an authority and the Board with respect to a scheme the Board was required to bring the matter before Parliament, though the method was different (Education Act, 1921, section 15 (3), 7 Halsbury's Statutes 137).

(a) "**Development plan**" —See section 11, p 103, *ante*

(b) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*.

(c) "**Local education order**".—The order to be made under this section must be regarded somewhat differently from other orders which the Minister is empowered to make under the Act for, in their case, only section 111, p 254, *post*, applies to their subsequent revocation or variation, whereas the amendment of a local education order is subject to the conditions referred to in sub-sections (2) and (3) of this section. The object of the order is to specify and define the duties of the local education authority in connection with the provision of proper educational facilities for the area The Minister is, by section 99, p 237, *post*, given special powers to enforce the execution by a local education authority of its duties in the event of default See also section 68, p 205, *post*, which defines the powers of the Minister to prevent the unreasonable exercise by a local education authority of its functions under the Act

Until the order comes into operation the transitional provisions in section 31, p 148, *post*, apply with respect to the separation of primary and secondary schools

(d) "**County schools**".—See section 9 (2), p 100, *ante*

(e) "**Voluntary schools**".—See sections 9 (2), p 100, *ante*, and 15, p 113, *post*

(f) "**Maintain**".—See the definition of this term in section 114 (1) and (2), p. 255, *post*

(g) "**Sufficient**".—As to the meaning of this term, see the latter part of section 8 (1), p 97, *ante*

(h) "**Primary and secondary schools**".—See the definition of these terms in section 114 (1), (3), p 255, *post* "School" is also defined in section 114 (1), *ibid*

(i) "**Available for their area**".—As to the availability of schools for the area of a local education authority, see note (k) to section 11, p 106, *ante*

(k) "**Assisted**".—By section 114 (1), p 255, *post*, "assist", in relation to a school, has the meaning assigned to it by section 114 (2), *ibid*

(l) "**Primary and secondary education**".—By section 114 (1), p 255, *post*, these terms have the meanings assigned to them by section 8, p 97, *ante*.

(m) **"Both primary and secondary education".**—See the proviso to section 11 (2), p. 104, *ante*, and section 114 (3), p. 258, *post*.

(n) **"The duties of the local education authority".**—As to the enforcement of these duties, see section 99, p. 237, *post*, and note (c), supra. The duties imposed by the order must be strictly "*intra vires*" the provisions of the Act and may not impose any requirement or obligation upon a local education authority which is in any way outside the terms of the Act. Its purpose is in fact to define the duties of the authority "with respect to the measures to be taken by the authority for securing that there shall be sufficient primary and secondary schools available for their area" (subsection (1) of this section), i.e., within the limits of the obligation imposed by section 8 (1), p. 97, *ante*.

(o) **"Shall be amended".**—See also section 111, p. 254, *post*.

(p) **"Discontinuance of voluntary school".**—See section 14, p. 112, *post*.

(q) **"Proprietor".**—In relation to any school this term is defined by section 114 (1), p. 255, *post*, as the person or body of persons responsible for the management of the school.

(r) **"Notice".**—In this case the section specifies that the notice is to be *served*; in consequence there is no doubt that section 113, p. 254, *post*, applies. *Cf.* note (ff) to section 11, p. 107, *ante*.

(s) **"Laid before Parliament".**—This is now a common provision in modern Acts of Parliament; see, for instance, section 299 of the Local Government Act, 1933; 26 Halsbury's Statutes 464, where, however, the period during which the regulations made under that Act are to be laid before Parliament is thirty days.

13. Establishment and discontinuance of county and voluntary schools.—(1) Where a local education authority (a) intend—

(*a*) to establish (b) a new county school (c);

(*b*) to maintain (d) as a county school any school (e) which at the time being is not such a school; or

(*c*) to cease to maintain (f) any county school or, save as provided by the next following section of this Act, any voluntary school (*g*);

they shall submit proposals for that purpose to the Minister. [224]

(2) Where any persons propose (h) that any school established by them or by persons whom they represent which at the time being is not a voluntary school, or any school proposed to be so established, should be maintained by a local education authority as a voluntary school they shall after consultation with the authority submit proposals for that purpose to the Minister. [225]

(3) After any proposals have been submitted to the Minister under this section the authority or persons by whom the proposals were submitted shall forthwith give public notice of the proposals in the prescribed manner (i), and the managers or governors (k) of any voluntary school affected by the proposals or any ten or more local government electors (l) for the area and any local education authority concerned, may within three months after the first publication of the notice submit to the Minister objections to the proposals:

Provided that, this subsection shall not have effect in the case of proposals for the maintenance as a voluntary school of a school which is at the time being a school in respect of which grants are made by the Minister (m), if the proposals are made with the concurrence of the authority and of the proprietor (n) of the school and of any trustees in whom is vested any interest in the school premises (o). [226]

(4) Any proposals submitted to the Minister under this section may be approved by him (p) after making such modifications therein, if any, as appear to him to be desirable:

Provided that the Minister shall not approve proposals for the maintenance as a county school of any school which, at the time being, is a voluntary school, unless he has, in accordance with the provisions of the Second Schedule (q) to this Act, approved an agreement made under the powers conferred by that Schedule between the authority and the managers or governors of the school for the transfer to the authority of all necessary interests in the school premises. [227]

(5) A local education authority shall not, without the leave of the Minister, do or undertake to do anything (whether or not provided for by the development plan (r) for the area) for which proposals are required by this section to be submitted to the Minister until such proposals have been approved by him. [228]

(6) After proposals for the establishment of a new school have been

approved by the Minister under this section the authority or persons by whom the proposed school is to be established shall submit to him in such form and in such manner as he may direct (s) specifications and plans of the school premises, and the Minister, on being satisfied that the school premises will conform to the prescribed standards (t), may approve the specifications and plans:

Provided that, before submitting specifications and plans in respect of a school which is to be maintained as a voluntary school, the persons by whom the school is to be established shall consult the local education authority. [229]

(7) When the proposals specifications and plans for a new school have been approved by the Minister under this section, it shall be the duty (u) of the authority or persons by whom the proposed school is to be established to give effect to the proposals in accordance with the specifications and plans so approved, except that in the case of proposals submitted under subsection (2) of this section the duty of providing playing fields (v) and any buildings required only for affording facilities for medical inspection or treatment (w) or for providing milk, meals or other refreshment (x) shall be the duty of the local education authority. [230]

(8) When proposals for the maintenance of any school have been approved by the Minister under this section, it shall be the duty of the local education authority to maintain it; and an authority shall not be under any duty to maintain a school after proposals that the authority shall cease to maintain it have been approved by the Minister under this section. [231]

NOTES

In the main, the following provisions of the Education Act, 1921, are replaced by this section:—

(1) Section 18; 7 Halsbury's Statutes 138, as to the provision of new schools by a local education authority for elementary education;

(2) Section 38; *ibid.* 151, as to the transfer of schools to the local education authority for elementary education;

(3) Section 73; *ibid.* 169 (in part), as to the transfer to the local education authority for higher education of schools for science and art;

(4) Sections 70; *ibid.* 168 (power to aid higher education) and 71; *ibid.* (general provision as to higher education powers) (in part).

The section states, in a logical and straightforward manner, the powers of a local education authority in connection with the provision of new county schools, the transfer of schools other than county schools to the authority and the discontinuance of the maintenance of a county or voluntary school, which were, in a more or less definite form, spread over a number of sections of the Education Act, 1921.

Compliance with the requirements of the section is necessary even where the proposal has already been included in the local education order made by the Minister under section 12, p. 107, *ante*. The provision of new schools, whether county or voluntary, will require the issue of public notices. Public notices will also be necessary if the local education authority proposes that an existing school should be closed. In either case the Minister's approval must be obtained before the proposal can be put into effect and a period of three months is allowed for objections to the proposal to be submitted to the Minister. In future the decision on a proposed closure of a school will not be determined solely by reference to the number of pupils attending, as was the case under section 19 of the Education Act, 1921; 7 Halsbury's Statutes 139, and, to a great extent, even after the passing of the Education (Necessity of Schools) Act, 1933; 26 Halsbury's Statutes 130. On the one hand it would be most undesirable to disrupt village life by the closure of many country primary schools in which the number of children after reorganisation may be less than 30. On the other hand there may well be cases in towns where there are two schools, each with substantially more than 30 pupils, one of which ought, in the interests of efficiency and economy, to be closed.

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule p. 271, *post*. Sections 117 and 118, pp. 266 and 267, provide for the application of the Act to London and the Isles of Scilly.

(b) **"Establish".**—Power to establish primary and secondary schools is given by section 9 (1), p. 100, *ante* (see particularly note (b) to that section). The development plan which the authority has prepared under section 11, p. 103, *ante*, will, unless the school was not in contemplation at that time, have specified that it is proposed to establish the school (section 11 (2) (c), *ibid.*), and the duty of providing it will have been imposed by the local education order made by the Minister under section 12, p. 107, *ante*, or, in the case of a school not referred to in the original order, by an amendment to the order under section 12 (2), *ibid.*

(c) **"County school".**—The term is defined in section 9 (2), p. 100, *ante*.

(d) **"Maintain".**—As to the meaning of this term, see section 114 (1) and (2), p. 255, *post*. Power to maintain a school in the circumstances referred to is given by section 9 (1), p. 100, *ante*. A proposal under this provision may or may not have been made in the development plan prepared by the authority under section 11, p. 103, *ante* (see sub-section 2 (a), *ibid.*), or included in the local education order or an amendment thereof made under section 12, p. 107, *ante*.

(e) **"School".**—The word "school" is defined as an institution for providing primary

or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school. Schools which are not for the time being maintained as county schools may be—

(*a*) nursery schools (see section 9 (4), p. 100, *ante*);
(*b*) special schools (see section 9 (5), p. 100, *post*);
(*c*) voluntary schools (see sections 9 (2), p. 100, *ante*, and 15, p. 113, *post*);
(*d*) independent schools (see definition in section 114 (1), p. 255, *post*, and also Part III of the Act, p. 206, *post*);
(*e*) schools in respect of which grant is payable by the Minister (sections 100 (1) (*b*) and 101, pp. 239 and 241, *post*). Of these nursery schools and special schools cannot become county schools unless their character is so changed that they cease to be nursery schools or special schools as the case may be.

(f) **"Cease to maintain".**—The discontinuance of provided elementary schools was formerly covered by section 17 (4) of the Education Act, 1921; 7 Halsbury's Statutes 138. Section 19 of the Education Act, 1921; 7 Halsbury's Statutes 139, as amended by the Education (Necessity of Schools) Act, 1933; 26 Halsbury's Statutes 130, which dealt with the determination as to whether a school was necessary or not, is not re-enacted, since the closer supervision by the Ministry of Education of the exercise by the local education authority of its functions renders the provision unnecessary (see the general note to this section). Section 14, p. 112, *post*, however, imposes certain restrictions upon the discontinuance of voluntary schools by managers or governors. The transfer of county and voluntary schools to new sites, and the substitution of new voluntary schools for old ones, is dealt with in section 15, p. 113, *post*.

(g) **"Voluntary school".**—See sections 9 (2), p. 100, *ante*, and 15, p. 113, *post*.

(h) **"Where any persons propose".**—This sub-section will not only apply to the establishment of new denominational schools, but to cases where the proprietor (as defined in section 114 (1), p. 255, *post*) of an assisted secondary school, a grant-aided secondary school or a private school thinks it would be desirable to take advantage of the financial and other facilities offered to the managers or governors of voluntary schools. As regards secondary schools which are at present not maintained by the local authority, see note (*d*) to section 7, p. 95, *ante*. In the case of grant-aided secondary schools, some relaxation of the requirements of the section is given by the proviso to sub-section (3). In certain circumstances, where the Minister has approved proposals for the establishment of a voluntary school under this sub-section, he may make to the managers or governors a 50 per cent. grant of the cost of construction (section 104, p. 244, *post*). Section 83, p. 222, *post*, extends the powers of the Minister to make schemes under the Endowed Schools Acts in order to enable any particular religious denomination concerned with an educational endowment to participate more effectively in the administration of the statutory system of public education. In addition, section 87, p. 223, *post*, exempts from the application of the Mortmain Acts assurances of property for educational purposes. As to the compulsory purchase of land by a local education authority for the purposes of a voluntary school, see section 90, p. 226, *post*. Section 109, p. 252, *post*, enables local education authorities, with the Ministers approval, to provide temporary assistance for voluntary schools in relation to accommodation.

(i) **"In the prescribed manner".**—The term "prescribed" means prescribed by regulations made by the Minister (section 114 (1), p. 255, *post*), as to which see section 112, p. 254, *post*. Sub-section (3) of this section replaces and substantially re-enacts section 18 (1) of the Education Act, 1921; 7 Halsbury's Statutes 138.

(*k*) **"Managers or governors".**—*See sections 17–20 inclusive*, pp. *121 to 130*, *post*, and section 32, p. 150, *post*.

(l) **"Any ten or more local government electors".**—This phrase takes the place of "any ten ratepayers" and thus substantially increases the number of those entitled to object. Most parents are local government electors though rarely are the mothers of schoolchildren themselves ratepayers. See the definition of "local government elector" in section 114 (1), p. 255, *post*.

(m) **"A school in respect of which grants are made by the Minister".**—See sections *100* (1) (*b*) and *101*, pp. *239* and *241*, *post*.

(n) **"Proprietor".**—*In relation to any school, this expression is defined by section 114* (1), p. 255, *post*, as the person or body of persons responsible for the management of the school.

(o) **"School premises".**—Section 114 (1), p. 255, *post*, provides that in relation to any school, the word "premises" includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house. See also the notes to section 10, p. 103, *ante*.

(p) **"May be approved by him".**—As to the power of the Minister to hold a local inquiry, see section 93, p. 229, *post*.

(q) **"Second Schedule".**—See p. 282, *post*.

(r) **"Development plan".**—See section *11*, p. *103*, *ante*.

(s) **"As he may direct".**—As to the revocation or variation of such directions, see section 111, p. 254, *post*.

(t) **"Prescribed standards".**—*By section 114 (1), p. 255, post, "prescribed" means* prescribed by regulations made by the Minister. This refers to the building regulations to be made under section 10, p. 103, *ante*. See that section and the notes thereto.

(u) **"It shall be the duty".**—As to the enforcement of this duty, see section 93 (1), p. 237, *post*.

(v) **"The duty of providing playing fields".**—As to the provision of facilities for recreation and social and physical training (including playing fields), see section 53, p. 187, *post*. It will be noted that under section 15 (3) (*b*), p. 114, *post*, the managers or governors of a voluntary school are not responsible for repairs to the school playground or playing fields.

(w) **"Medical inspection or treatment".**—Under section 48, p. 179, *post*, it is the duty of the local education authority to provide for the medical inspection, and to make arrangements for securing the provision of free medical treatment, of pupils attending schools maintained by the authority. By subsection (5), *ibid.*, the managers or governors of a voluntary school may be required to provide reasonable facilities for these purposes, but not to incur expenditure therefor.

(x) **"Milk, meals and other refreshment".**—By regulations to be made under section 49, p. 183, *post*, it is to be the duty of the local education authority to provide milk, meals and

other refreshment for pupils attending schools maintained by the authority. The regulations may require the managers or governors of voluntary schools to provide facilities and to render services for these purposes, but not to incur expenditure therefor.

14. Restrictions on discontinuance of voluntary schools by managers and governors.—(1) Subject to the provisions of this section (a), the managers or governors (b) of a voluntary school (c) shall not discontinue (d) the school except after serving on the Minister and on the local education authority (e) by whom the school is maintained (f) not less than two years' notice (g) of their intention to do so:

Provided that, except by leave of the Minister, no such notice as aforesaid shall be served by the managers or governors of any voluntary school in respect of the establishment or alteration (h) of which expenditure has been incurred (i) by the Minister or by any local education authority or former authority (k), and if the Minister grants such leave he may require the repayment of such portion of the amount of the expenditure as he thinks just. [232]

(2) No such notice as aforesaid shall be withdrawn (l) except with the consent of the local education authority. [233]

(3) If, while any such notice as aforesaid as in force with respect to a voluntary school, the managers or governors of the school inform the local education authority that they are unable or unwilling to carry on (m) the school until the expiration of the notice, the authority may conduct (n) the school during the whole or any part of the unexpired period of the notice as if it were a county school (o), and shall be entitled to the use of the school premises (p), free of charge, for that purpose. [234]

(4) While any school is being conducted by a local education authority as a county school under the last foregoing subsection, the authority shall keep the school premises in good repair (q), and for all purposes relating to the condition of the school premises, the occupation and use thereof, and the making of alterations thereto, any interest (r) in the said premises which is held for the purposes of the school shall be deemed to be vested in the authority:

Provided that the managers or governors of the school shall be entitled to the use of the school premises (s) or any part thereof when not required for the purposes of the school to the like extent as if they had continued to carry on the school during the unexpired period of the notice. [235]

(5) Where any school is discontinued in accordance with the provisions of this section the duty of the local education authority (t) to maintain the school as a voluntary school shall be extinguished. [236]

NOTES

This section, which places restrictions upon the closure of voluntary schools, replaces section 40 of the Education Act, 1921; 7 Halsbury's Statutes 151, and section 10 (1) (*e*) of and the Third Schedule to the Education Act, 1936; 29 Halsbury's Statutes 126, 130. It applies not only to closures which may take place as a result of reorganisation provided for or new schools proposed to be established in consequence of the preparation by the local education authority of a development plan but also to any discontinuance which is contemplated during the life of the Act. The objects of the section are to avoid the difficulties which might arise were the managers or governors suddenly to discontinue a school without giving the local education authority a reasonable opportunity to provide alternative accommodation and to prevent a change of mind on the part of the managers or governors after the local education authority has made arrangements to provide such alternative accommodation.

(a) **"Subject to the provisions of this section".**—This refers to sub-section (3), under which the local education authority may carry on the school during the currency of the notice if the managers or governors are unable or unwilling to do so.

(b) **"Managers or governors".**—See sections 17–20 and section 32, pp. 121 to 130 and 150, *post*.

(c) **"Voluntary school".**—See section 9 (2), p. 100, *ante*, and 15, p. 113, *post*.

(d) **"Shall not discontinue".**—The word "discontinue" in this sub-section takes the place of "close" in the Education Act, 1921, section 40; 7 Halsbury's Statutes 151. Normally in the case of voluntary schools the premises are held by the managers or by a body of trustees on trust for the purposes of carrying on a school or of allowing a school to be carried on. Failure to comply with this section would generally constitute also a breach of trust. Trustees or managers wishing to discontinue a school should, therefore, not only comply with the terms hereof but should at once apply for the advice of the Board of Education under section 16 of the Charitable Trusts Act, 1853; 2 Halsbury's Statutes 324, and such advice when acted upon confers a complete indemnity upon the trustees. As to the enforcement of the duty thus imposed upon the managers or governors, see section 99 (1), p. 237, *post*. Before determining any question under this section the Minister may hold a local inquiry (section 93, p. 229, *post*).

(e) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(f) **"Maintained".**—See the definition of the expression "maintain" in section 114 (1) and (2), p 255, *post* Section 99 (3), p 237, *post*, empowers the Minister to take any necessary action in the event of default by the local education authority in relation to the maintenance of the school.

(g) **"Notice".**—As to the service of notices, see section 113, p 254, *post*

(h) **"Alteration".**—By section 114 (1), p 255, *post*, alterations, in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school

(i) **"Expenditure has been incurred".**—This proviso replaces and extends section 10 (1) (*e*) of, and the Third Schedule to, the Education Act, 1936; 29 Halsbury's Statutes 126, 130 Expenditure of this nature may have been incurred by a local education authority in the case of special agreement schools (section 15, p 113, *post*) and by the Minister in the case of aided schools and special agreement schools under sections 103, 104 or 105, pp 243, 244 and 246, *post*

(k) **"Former authority".**—This term is defined by section 114 (1), p 255, *post* as any authority which was a local education authority within the meaning of any enactment repealed by this Act or any previous Act

(l) **"Shall be withdrawn".**—As stated in the general note, *supra*, this sub-section prevents the managers or governors from withdrawing their notice of discontinuance once given, and this avoids the difficulty which would arise had the local education authority made alternative arrangements as a result of receiving the notice

(m) **"Unable or unwilling to carry on".**—This sub section replaces section 40 (2) of the Education Act, 1921, 7 Halsbury's Statutes 152

(n) **"May conduct".**—No obligation is placed upon the local education authority to conduct the school in the place of the managers or governors, for the authority may be in a position to accept the pupils concerned into another school or there may be some other reason why they should not do so

(o) **"County school".**—See note (u) to section 9, p 102, *ante* The effect of the subsection is that in the circumstances mentioned the local education authority may carry on the school exactly as if it was a school established by the authority See, however, note (r), *infra*

(p) ***"School premises".***—*See the definition of "premises" in section 114 (1), p 255, post*, and the notes to section 10, p. 103, *ante* Under the Education Act, 1921, section 40 (2), 7 Halsbury's Statutes 152, the authority was permitted the use of the school furniture as well as the school premises, but the present section makes no reference to furniture

(q) **"In good repair".**—This re enacts the obligation of the authority under the Education Act, 1921, section 40 (2), with the addition of the word "good", so far as the repair of the school premises is concerned The former provision, however, imposed an obligation upon the authority to pay "any outgoings in respect" of the schoolhouse. Since the authority was to be allowed the use of the schoolhouse "free of charge" the meaning of this obligation is obscure, *though it may possibly have referred to outgoings imposed by some other statute (see, for* example, *Foulger v Arding* [1902] 1 K B 700, 31 Digest 302, *4467*, *Greaves v Whitmarsh, Wason & Co Ltd*, [1906] 2 K B 310, 31 Digest 304, *4480*; *Henman v Berliner* [1918] 2 K B. 236, 31 Digest 303, *4476*). The obligation does not reappear in the present Act.

(r) **"Any interest".**—This will enable the authority to take such action in relation to repairs, etc as the managers or governors could have taken under the provisions of the instrument by which the school was previously carried on It may, however, be argued that this provision limits, to some extent, the general power of the authority to conduct the school as if it were a county school, since the authority will presumably be compelled to comply with the terms of any trust deed applying to the school, so far as they are not inconsistent with this section

(s) **"The use of the school premises".**—See section 22, p 133, *post*

(t) ***"The duty of the local education authority".***—*The powers of the Minister until the* duty is extinguished under this section, in the case of default by the local education authority, are contained in section 99 (3), p 237, *post*

15. *Classification of voluntary schools as controlled schools*, aided schools, or special agreement schools.—(1) Voluntary schools (a) shall be of three categories, that is to say, controlled schools (b), aided schools (c), and special agreement schools (d), and in schools of those several categories the management of the school (e), the secular instruction (f) and religious education (g), and the appointment and dismissal of teachers (h), shall be regulated in accordance with the provisions hereinafter contained relating to those matters in controlled schools, aided schools, and special agreement schools respectively [237]

(2) Upon application being duly made to him with respect to any voluntary school, the Minister may by order direct (i) that the school shall be a controlled school, an aided school or a special agreement school, and where he is satisfied that the managers or governors (k) of the school will be able and willing, with the assistance of the maintenance contribution (l) payable by the Minister under this Act, to defray the expenses which would fall to be borne by them under paragraph (*a*) of the next following subsection, the order shall direct that the school shall be an aided school, or, in the case of a school with respect to which a special agreement has been made under the Third Schedule to this Act (m), a special agreement school.

Provided that, subject to the provisions of this section, any application

for an order (n) directing that a school shall be an aided school or a special agreement school must be made, in the case of a school which became an voluntary school by virtue of subsection (3) of section nine of this Act (o) not later than six months after the date on which the managers or governors of the school received notice (p) of the approval of the development plan (q) for the area, and in any other case not later than the submission to the Minister of the proposals (r) that the school should be maintained by the local education authority as a voluntary school; and, subject to the transitional provisions of this Act (s) as to the management and maintenance of voluntary schools, a voluntary school with respect to which no order is in force under this section directing that it shall be an aided school or a special agreement school shall be a controlled school. [238]

(3) The managers or governors of a controlled school shall not be responsible for any of the expenses of maintaining (t) the school, but the following provisions shall have effect with respect to the maintenance of aided schools and special agreement schools:

(*a*) the following expenses shall be payable by the managers or governors of the school, that is to say, the expenses of discharging any liability incurred (u) by them or on their behalf or by or on behalf of any former managers or governors of the school or any trustees thereof for the purposes of establishing or carrying on the school any expenses incurred in effecting such alterations (v) to the school buildings as may be required by the local education authority for the purpose of securing that the school premises (w) should conform to the prescribed standards (x), and any expenses incurred in effecting repairs to the school premises not being repairs which are excluded from their responsibility by the following paragraph:

(*b*) the managers or governors of the school shall not be responsible for repairs to the school playground or playing fields (y) or to the interior of any buildings forming part of the school premises or for repairs necessary in consequence of the use of the premises, in pursuance of any direction (z) or requirement of the authority, for purposes other than those of the school. [239]

(4) If at any time the managers or governors of an aided school or a special agreement school are unable or unwilling to carry out their obligations under paragraph (*a*) of the last foregoing subsection it shall be their duty (aa) to apply to the Minister for an order revoking the order by virtue of which the school is an aided school or a special agreement school, and upon such an application being made to him the Minister shall revoke the order (bb). [240]

(5) If at any time the Minister is satisfied that the grant made in respect of a special agreement school in pursuance of the special agreement made with respect to the school under this Act has been repaid to the local education authority (cc) by which the school is maintained, the Minister shall, upon application being made to him for that purpose by the managers or governors of the school, by order revoke the order by virtue of which the school is a special agreement school and, if satisfied that the managers or governors of the school will be able and willing, with the assistance of the maintenance contribution payable by the Minister under this Act, to defray the expenses which would fall to be borne by them under paragraph (*a*) of subsection (3) of this section, shall by order direct that the school shall be an aided school. [241]

(6) In this section the expression "school buildings", in relation to any school, does not include any buildings required only for affording facilities for enabling the local education authority to carry out their functions with respect to medical inspection or treatment (dd) or for affording facilities for providing milk, meals or other refreshment (ee) for pupils (ff) in attendance at the school. [242]

NOTES

Although elementary education in this country first came into being through the efforts of denominational bodies and until 1870 the only way in which the State participated in the field of elementary education was by granting subsidies to the voluntary bodies which were responsible for the elementary schools, it has long been recognised by all but those responsible for them that the existence within the public educational system of voluntary or non-provided schools with divided or dual control as between the local education authority and the managers is an unsatisfactory feature of that system. Such a statement is in no way intended to belittle the extremely valuable work in connection with education which has been undertaken by the denominational bodies concerned.

The Elementary Education Act, 1870 ; 7 Halsbury's Statutes 120, established elective school boards for the purpose of providing and maintaining from public funds schools which became known as board schools. The Act established the principle, by the provision known as the Cowper-Temple clause, that tenets distinctive of particular religious denominations should not be taught in publicly provided schools.

By the turn of the century the voluntary schools, though still considerably in the majority, were experiencing grave difficulties due to the rise and cost of higher educational, staffing and hygienic standards, and of providing education over a lengthened school life.

Consequently it became necessary to grant further public assistance to voluntary schools. The Education Act, 1902, by which the assistance was granted, created the system which continued to exist until the passing of the present Act. Under this system the whole cost of the maintenance of voluntary schools, apart from the cost of repairs (other than those due to fair wear and tear) and of improvements to the buildings, was transferred to the local education authorities to which, under the Act, the powers of the school boards were transferred The local education authority paid the teachers' salaries, though their appointment remained with the managers, and though the authority was given control of secular instruction, it had no general power to alter the organisation of a voluntary school in such a way, for example, as to convert a school for children of all ages into a school for juniors or seniors.

The terms of the 1902 Act aroused strong opposition at the time, and subsequently, on the ground that public funds were in effect being used to subsidise the propagation of the dogmas of particular churches, thus violating the spirit of the Cowper-Temple clause. In practice, the legal safeguards and the divided responsibilities of this system of dual control gave rise to endless complications in administration, which retarded educational progress, engendered friction and consumed time and energies which could be spent, states the White Paper on Educational Reconstruction (Cmd. 6458 of 1943), to much better purpose. The White Paper continues :—

" The system is inconsistent with proper economy and efficiency since, for example—

(i) a non-provided school with 30 or more pupils cannot be closed, however much space or accommodation there may be in neighbouring council schools, unless there is another school of the same denomination to which its pupils can go ;

(ii) a new non-provided school may be set up although the children who will attend it are adequately accommodated already in council schools ;

(iii) the Authority cannot ensure that a vacancy on the staff of a non-provided school is filled, not by a new appointment, but by the transfer to it of a redundant teacher from another school in the area, so that without dismissals of teachers, which are contrary to the practice of Authorities, reasonable and economical adjustments of staffing cannot be ensured.

Most non-provided schools are in old buildings, nearly 92 per cent. of them dating from 1902 or earlier. Much capital expenditure will be needed on these schools if they are to be brought and kept abreast not only of present day educational requirements and aspirations, but also of modern standards of hygiene, ventilation and the like. It will be beyond the financial resources of most managers to meet unaided the bill which must be met if children in voluntary schools are not to be denied the advantages enjoyed by children in council schools.

The following figures illustrate the results of managers' lack of funds and of local education authorities' lack of control over the organisation of voluntary schools :—

(a) of the 753 schools still remaining on the Board's Black List of schools with defective premises (issued in 1925 and now very much out of date) 541 are non-provided schools ;

(b) on the 31st March, 1939, 62 per cent. of the children of 11 years of age and over in council schools were in senior schools or departments specially organised for children of that age, while the corresponding figure for non-provided schools was 16 per cent.

The scope of the problem is shown by the figures for the 31st March, 1938, when there were 10,553 non-provided schools with an average attendance of 1,374,000 pupils, and 10,363 council schools with an average attendance of 3,151,000. Thus only 30 per cent. of public elementary school children are in non provided schools although these schools are more numerous than council schools. They are, therefore, in general very much smaller than council schools. This involves loss of economy and efficiency in organisation and administration, though due allowance must be made for the fact that a considerable proportion of non-provided schools are in rural areas.

With the development since 1926 of reorganisation, the position of the non-provided schools became acute. Managers could not afford to make suitable provision for their older children and many would not consent to the decapitation of their school so that the seniors might attend a senior school provided by the council. To meet this situation the Education Act, 1936, enabled, but did not compel, local education authorities for a limited period to pay not less than 50 per cent. nor more than 75 per cent. of the cost of new non-provided school building for senior children. The building proposals and organisation had to be of a standard approved by the Authority and the Board, and the teachers in the school so aided had to be appointed and dismissed by the Authority, subject to the right of the Managers to be satisfied as to the fitness and competence of certain of the teachers (called " reserved " teachers) to give denominational religious instruction. Owing to the inability of many Managers to raise their share of the cost, to the dislike by some of the increased control given to local education authorities and to the unwillingness of a few local

education authorities to subsidise denominational schools, only 519 proposals were put forward under the 1936 Act (289 of these were in respect of Roman Catholic Schools), providing for some 136,000 out of 400,000 or more senior children now in non provided schools Of these proposals only 37 have materialised and the remainder cannot now be proceeded with without further legislation '

The position as outlined was that existing immediately prior to the introduction of the Bill which has now become the Education Act 1944 Had the system remained unaltered, non-provided schools would have been required to bear a financial burden in excess of their capacity, senior schools being unable to conform to the new policy of equal standards in all forms of secondary education and the churches being unable to face the even greater financial problem involved in the modernisation or replacement of much of the non provided school accommodation for junior and infant children

It therefore became necessary for the Government to find a solution of the problem from amongst the various alternatives suggested, which included the total abolition of the Dual System and the transfer of all non provided schools to the local education authority, the adoption of the Scottish system, and the provision of further financial assistance whilst retaining the former framework of the system unchanged

The Government felt unable to accept a solution on the lines of the Scottish system since this would have meant a reversal of the principle embodied in the Cowper Temple clause It was felt, moreover, that completely to abolish the Dual System would be unjustly to disregard the services of the churches to the community as pioneers in public education, as the protagonists of Christian teaching in schools and as having for many generations voluntarily spent large sums on the provision and upkeep of premises for this purpose

The continuance of the Dual System in a modified form, with the grant of further financial assistance, accompanied by a corresponding extension of public control to ensure the effective and economical organisation and development of both primary and secondary education was considered to be the most satisfactory method of removing the educational handicaps of the system and of doing justice to all the interests involved, and this has been embodied in this and subsequent sections of the Act

As was stated by the President of the Board of Education in the Explanatory Memorandum (Cmd 6492 of 1943) which was issued with the Bill, the object of the Act is to enable the voluntary, no less than the county, schools to play an effective part in the education of the future From the Education Act, 1902, until the passing of the present Act, the cost of erecting non provided public elementary schools has fallen entirely on the denominations with the exception of those built or enlarged under the Education Act 1936, 29 Halsbury's Statutes 117 with the aid of grant from the local education authority In addition the denominations have also been responsible for making such alterations in the building as might reasonably be required by the local education authority and for the cost of all repairs except those due to fair wear and tear, which were the responsibility of the local education authority The authority was not em*powered to incur any other expenditure in respect of the school fabric The teachers at such* schools were appointed by the managers, subject to the consent of the local education authority on educational grounds, but their salaries were paid by the authority, which was responsible for all the other running costs of the school such as the provision of the necessary books and apparatus, and the heating lighting and cleaning of the premises

So far as non-provided secondary schools were concerned, the relationship between the governors and the local education authority was very much looser Authorities could and did give these schools financial assistance, in many cases of a very considerable amount Any such assistance was, however, entirely discretionary and there was nothing in law to prevent its being withdrawn even though, as was the case, in nearly every instance, it was essential to the maintenance of the school The prohibition in regard to spending money on the fabric of non provided public elementary schools did not apply to secondary schools and the extent to which local education authorities were prepared to finance the extension or improvement of such schools varied greatly as between one area and another

From the passing of the Act the provisions relating to the various types of voluntary schools will apply to primary and secondary schools alike

The present section provides that voluntary schools which, by section 9 (2), p 100, *ante*, are primary and secondary schools maintained by a local education authority (other than nursery schools and special schools) but not established by such an authority, shall be of three categories, i e , controlled schools, aided schools and special agreement schools

The following is a summary of the provisions applicable to these three types of school —

(1) **Aided schools.**

The managers or governors of these schools will continue to appoint their own teachers (section 24 (2), p 136, *post*) and to have the teachers' salaries and other maintenance charges paid by the local education authority (sub section (3) of this section) They will also receive a grant of 50 per cent from the Minister towards the cost of any alterations which may be required to the buildings (see section 102 p 242, *post*) Moreover they will be responsible only for the external repairs, and half the cost of these will be met by the Exchequer, the responsibility for internal repairs and repairs to the playgrounds and playing fields will rest on the local education authority In addition to a grant of 50 per cent of the cost of alterations to existing buildings, where a school has been transferred, under section 16, p 119, *post*, to a new site because the existing premises cannot be altered to conform to the standards prescribed by the Minister or as a result of movements of population or of slum clearance, or other action of a housing or planning authority, the Minister may, if he thinks fit, under section 103, p 243, *post*, pay 50 per cent of the cost of the substituted premises This grant may similarly be given towards the premises of a school provided in substitution for one or more existing schools

The financial liability of the managers or governors of aided schools is thus limited to half the cost of alterations and improvements and of external repairs They will, however, continue to be responsible for the discharge of any liability previously incurred either by *them or on their behalf or by or on behalf of their predecessors in connection with the* establishment or the carrying on of the school

In addition to these provisions the Minister has been empowered—

(1) by section 104, p 244, *post*, to make grants in respect of (*inter alia*) aided schools

established for the accommodation of "displaced pupils", as defined in sub section (2) of that section, and

(2) by section 105, p 246, *post* to make loans to (*inter alia*) aided schools in respect of "initial expenditure", as defined in sub section (2) of that section

(2) **Special agreement schools.**

In order to assist the voluntary schools to make provision for reorganisation and the raising of the school leaving age to fifteen, the Education Act, 1936, 29 Halsbury's Statutes 117 enabled local education authorities to enter into agreements to make grants of between 50 per cent and 75 per cent towards the cost of the erection or extension of non provided schools for senior pupils The Explanatory Memorandum to the Bill stated that 519 proposals were put forward though, owing to the war, at that time only 37 had materialized Under sub-section (2) of this section and the Third Schedule to the Act, p 283, *post*, provision is made whereby proposals submitted within the time limit laid down in the Education Act, 1936, or under the corresponding Senior Public Elementary Schools (Liverpool) Act 1939, may be revived, with such modifications as war damage or new planning or new educational requirements may render appropriate

In these schools the appointment of the teachers will rest with the local education authority, subject to their consulting the managers or governors on the appointment of "reserved teachers" to give the denominational religious instruction The number of reserved teachers will be a matter for agreement between the local education authority and the managers or governors

The arrangements for maintenance will be the same as in the case of aided schools, and like them these schools will be eligible for the 50 per cent grant from the Minister on the managers' share of the repairs, as well as for any alterations which may subsequently be required to the buildings (see section 102, p 242, *post*)

As in the case of aided schools, the managers or governors will continue to be responsible for the discharge of any liability previously incurred either by them or on their behalf or by or on behalf of their predecessors in connection with the establishment or carrying on of the school

Furthermore as in the case of aided schools, where a school has been transferred, under section 16, p 119, *post*, to a new site because the existing premises cannot be altered to conform to the standards prescribed by the Minister, or as a result of movements of population or of slum clearance or of other action of a housing or planning authority, the Minister may, under section 103, p 243 *post*, pay 50 per cent of the cost of the substituted premises This grant may similarly be given towards the premises of a school provided in substitution for one or more existing schools

In addition to these provisions, the Minister has been empowered—

(1) by section 104, p 244, *post*, to make grants in respect of (*inter alia*) special agreement schools established for the accommodation of "displaced pupils", as defined in sub section (2) of that section, and

(2) by section 105, p 246, *post*, to make loans to (*inter alia*) special agreement schools in respect of "initial expenditure", as defined in sub section (2) of that section

(3) **Controlled schools.**

In the case of these schools all financial responsibility, even for the discharge of a liability previously incurred in connection with the establishment or carrying on of the school, will pass to the local education authority The authority will also be responsible for the appointment and dismissal of the teachers, but it will be obliged to consult the managers about the appointment of the head teacher and to satisfy the foundation managers as to the fitness and competence of any persons whom it is proposed to appoint as reserved teachers to give denominational religious instruction for not more than two periods a week to those children whose parents desire it The number of reserved teachers will not exceed one fifth of the teaching staff and no reserved teacher may be appointed where the total staff is not more than two (see section 27 (2), p 143, *post*)

The financial effects of the proposals relating to voluntary schools which are contained in this and the following sections will be specially apparent in the case of the existing voluntary secondary schools Under the terms for aided schools many of the governing bodies, which have hitherto had to shoulder responsibility for the maintenance of their schools and the upkeep of their premises—tasks which they were only able to perform with the help of substantial aid from the local authority—will now have the opportunity to receive, as of right, the whole of the running expenses from the local education authority and will keep their endowment income for meeting expenditure on premises, towards which they will also receive a 50 per cent grant from the Minister in addition perhaps to special grants or loans under section 104, p 244, *post*, or section 105, p 246, *post*

Subject to certain conditions and safeguards, managers and governors will have the right to choose whether their schools shall become aided schools or controlled schools, whilst in cases where proposals had been submitted under the Education Act, 1936, 29 Halsbury's Statutes 117, provision is made for their revival, in which event the schools will become special agreement schools

(a) "**Voluntary schools**".—Voluntary schools are primary and secondary schools maintained by a local education authority (not being nursery schools) but established otherwise than by a local education authority or a former authority (see section 9 (2), p 100, *ante*, and particularly note (g) to that section) The term "school" is defined in section 114 (1), p 255, *post* Two of the fundamental difficulties of the Dual System in the past are removed by the Act, in that the local education authority may alter the organisation and age range of the school as may be necessary (sections 17 (3), p 121, *post*, and 23, p 134, *post*), and, subject to the consent of the Minister, may cease to maintain redundant schools irrespective of the number of pupils (section 13 (1), p 109, *ante*) Section 86, p 222, *post*, extends the powers of the Minister to make schemes under the Endowed Schools Acts for the purpose of enabling any particular religious denomination to participate, by means of educational endowments, more effectively in the administration of the statutory system of public education As to the provision, with the Minister's approval, of temporary assistance for voluntary schools in connection with accommodation, see section 109, p 252, *post*

(b) "**Controlled schools**".—If the managers or governors of a voluntary school are

unable or unwilling to meet half the cost of the alterations and improvements needed to bring the buildings up to standard (even with the assistance of a loan under section 105, p. 246, *post*), and of the continuing external repair of the fabric, the school will become a controlled school (sub-section (2)) and all financial obligations will pass to the local education authority (sub-section (3)). With them will pass the power of appointing and dismissing teachers (section 24 (1), p. 136, *post*), subject to the right of the managers or governors to be consulted as to the appointment of the head teacher (section 27 (3), p. 143, *post*) and to the right of the foundation managers to be satisfied as to the appointment of reserved teachers (section 27 (2), (4), p. 143, *post*). These teachers will give denominational instruction for not more than two periods a week to those children whose parents desire it (section 27 (1), p. 143, *post*). Apart from this, the religious instruction will be in accordance with an agreed syllabus (section 27 (6), p. 143, *post*). The school premises will be occupied and used in accordance with the directions of the local education authority, except on Saturdays and Sundays (section 22 (1), p. 133, *post*). The appointment and dismissal of caretakers will also be a matter for the local education authority (section 22 (3), p. 133, *post*). The constitution of the managers will be altered (section 18 (3), p. 127, *post*).

(c) **"Aided schools".**—If the managers or governors of a voluntary school are able and willing to meet half the cost of alterations, improvements and external repairs, the school will, unless a special agreement has been made under the Third Schedule, p. 283, *post*, become an aided school (sub-section (2)), and the remaining half will be met by a direct grant from the Exchequer (section 104, p. 244, *post*). The previous law relating to the respective responsibilities of authorities and managers in regard to repairs has been simplified by the abolition of the unsatisfactory "fair wear and tear" clause (Education Act, 1921, proviso to section 29 (2) (*d*) ; 7 Halsbury's Statutes 144), and placing the responsibility for external repairs upon the managers and for other repairs, including those to the playground and playing fields, upon the authority (sub-section (3)). The powers and duties of managers in regard to the appointment and dismissal of teachers (section 24 (2), p. 136, *post*) and the giving of denominational religious instruction (section 28, p. 144, *post*) remain substantially unaltered and denominational religious instruction will continue to be given as at present, subject to the right of parents who so desire to have their children given religious instruction in accordance with an agreed syllabus (proviso to section 28 (1), p. 144, *post*). A special power is given to local education authorities by section 66, p. 202, *post*, to provide assistance for the governors of aided secondary schools in connection with liabilities incurred before 1st April, 1945.

(d) **"Special agreement schools".**—This section and the Third Schedule, p. 283, *post*, in effect revive the provisions of the Education Act, 1936 ; 29 Halsbury's Statutes 117 (and corresponding provisions of the Senior Public Elementary Schools (Liverpool) Act, 1939), which enabled local education authorities for a limited period to pay not less than 50 per cent. nor more than 75 per cent. of the cost of providing new non provided school buildings for senior children. By virtue of these provisions a local education authority may enter into agreements, or resuscitate agreements already made, to make grants, of between 50 and 75 per cent. of the cost of any of the projects for which proposals were submitted by the managers within the time limit prescribed by sections 8 and 15 of the Education Act, 1936 ; 29 Halsbury's Statutes 123, 128. The Third Schedule, *supra*, permits the revision of any such proposals where rendered necessary or desirable as a result of war damage or new planning or new educational requirements. Schools already built under the 1936 Act and schools built under these provisions are to be known as special agreement schools The religious instruction will be in accordance with the trust deed (section 28, p. 144, *post*) and will be under the control of the managers. "Agreed syllabus" instruction will be available for those children whose parents wish them to receive such instruction and cannot with reasonable convenience send them to a school where it is ordinarily given (proviso to section 28 (1), p. 144, *post*).

(e) **"The management of the school".**—See sections 17–22 inclusive, pp. 121 to 133, *post*.

(f) **"The secular instruction".**—See section 23, p. 134, *post*.

(g) **"Religious education".**—See generally, sections 25–30 inclusive, pp. 139 to 147, *post*, and, in particular, as to controlled schools, section 27, p. 143, *post*, and as to aided schools and special agreement schools, section 28, p. 144, *post*.

(h) **"The appointment and dismissal of teachers".**—See generally, section 24, p. 136, *post*, and as to reserved teachers, section 27 (2), (4) and (5), p. 143, *post*, and as to the head teacher of a controlled school, section 27 (3), p. 143, *post*. Special provision for the dismissal, on religious grounds, of a teacher in an aided school by the managers or governors is made by section 28 (2), p 144, *post*, and as to the employment of reserved teachers in special agreement schools, see section 28 (3), (4), p. 144, *post*, and the Third Schedule, p. 283, *post*. Subject to the provisions referred to, section 30, p. 147, *post*, safeguards the religious position of teachers. As to the compensation of teachers prejudicially affected as a result of the operation of this section, see section 98 (2), p. 234, *post*.

(i) **"The Minister may by order direct".**—As to the variation or revocation of such an order, see section 111, p. 254, *post*, and sub-sections (3) and (4) of this section, If on an application for an order directing that a school shall become an aided school or a special agreement school it appears to the Minister that the area served by the school is a "single-school area", then, unless he is satisfied that the expenses to be borne by the managers or governors under sub-section (3) (*a*) of this section can be defrayed without the assistance of a loan under section 105, p. 246, *post*, the Minister must consult such persons or bodies of persons as appear to him to be representative of any religious denomination likely to be concerned, and must, unless he thinks it unnecessary, hold a local inquiry under section 93, p 229, *post* (section 105 (3), p. 246, *post*). He may, in any event, hold a local inquiry if he thinks fit (section 93, *supra*).

(k) **"Managers or governors".**—See sections 17–20 inclusive, pp. 121 to 130, *post*

(l) **"Maintenance contribution".**—See section 114 (1), p. 255, *post*, which provides that a maintenance contribution, in relation to any voluntary school, means a contribution payable under section 103, p. 243, *post*

(m) **"The Third Schedule to this Act".**—See p. 283, *post*.

(n) **"Any application for an order".**—The transitional provisions of the Act relating to schools which automatically become voluntary schools on 1st April, 1945, are as follows :—

(1) From 1st April, 1945, until the school becomes a controlled school, an aided school or a special agreement school by order of the Minister under sub-section (2) of this section, it will be deemed to be an aided school, but the provisions of the Act relating to aided schools will apply subject to certain modifications (section 32, p. 150, *post*) ;

(2) Application for an order under sub-section (2) of this section directing that the school shall be a controlled school, an aided school or a special agreement school must be made to the Minister within six months after the managers or governors receive notice of the approval of the development plan for the area;

(3) If no application is made within the specified time, at the expiry of that period the school will automatically become a controlled school.

(o) **"Sub-section (3) of section nine of this Act".**—Under section 9 (3), p 100, *ante*, every school which, immediately before 1st April, 1945, was, within the meaning of the enactments repealed by the Act, a public elementary school provided otherwise than by a former authority, but was maintained by a former authority, became a voluntary school and consequently maintainable by the local education authority. The effect of the sub-section is that all non-provided public elementary schools which were maintained by any authority which was a local education authority under an enactment repealed by this Act, become voluntary schools under this Act and are maintainable by the local education authority.

Where the premises of any school formerly a public elementary school have ceased to be used as a school by reason of war damage, or for any other reason connected with the war, they may still be regarded as a school for the purposes of this Act (section 114 (6), p. 258, *post*).

(p) **"Notice".**—As to the service of notices, see section 113, p. 254, *post*.

(q) **"Approval of the development plan".**—See section 11 (4), p. 103, *ante*.

(r) **"Proposals".**—Under section 13 (2), p. 109, *ante*, where proposals that a school other than a voluntary school, or a new school, should become a voluntary school are submitted to the Minister, the proposal as to its status must be submitted at the same time. If no application is made, or if the Minister does not make an order under this sub-section, the school will become a controlled school.

(s) **"Transitional provisions of this Act".**—See section 32, p. 150, *post*.

(t) **"Expenses of maintaining".**—See the definition of "maintain" in section 114 (1) and (2), p 255, *post*.

(u) **"Expenses of discharging any liability incurred".**—As stated in the general note to this section, the discharge of such expenses will continue to be the liability of the managers or governors where the school becomes an aided school or a special agreement school, but will pass to the local education authority where the school becomes a controlled school.

(v) **"Alterations".**—By section 114 (1), p. 255, *post*, this expression, in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school.

(w) **"School premises".**—The term "premises" is defined in section 114 (1), p. 255, *post*.

(x) **"Prescribed standards".**—"Prescribed" is defined by section 114 (1), p. 255, *post*, as meaning prescribed by regulations made by the Minister. Under section 10, p. 103, *ante*, the Minister is to make regulations requiring local education authorities to secure that the school premises of every school maintained by them conform to such standards as may be prescribed.

(y) **"Playing fields".**—As to the provision of playing fields, see section 53, p. 187, *post*.

(z) **"Direction".**—See section 22 (2), p. 133, *post*, and 111, p. 254, *post*.

(aa) **"It shall be their duty".**—As to the enforcement of this duty, see section 99 (1), p. 237, *post*.

(bb) **"The Minister shall revoke the order".**—In the event of the Minister revoking the order under this sub-section the school will become a controlled school. Special provision to enable a special agreement school to become an aided school is contained in sub section (5).

(cc) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(dd) **"Medical inspection or treatment".**—Under section 48, p 179, *post*, it is the duty of the local education authority to provide for the medical inspection, and to make arrangements for securing the provision of free medical treatment, of pupils attending schools maintained by the authority. By subsection (5), *ibid.*, the managers or governors of a voluntary school may be required to provide reasonable facilities for these purposes, but not to incur expenditure therefor.

(ee) **"Milk, meals or other refreshment".**—By regulations to be made under section 49, p. 183, *post*, it is to be the duty of the local education authority to provide milk, meals and other refreshment for pupils attending schools maintained by the authority. The regulations may require the managers or governors of voluntary schools to provide facilities and to render services for these purposes, but not to incur expenditure therefor.

(ff) **"Pupils".**—By section 114 (1), p. 255, *post*, "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act.

16. Transfer of county and voluntary schools to new sites, and substitution of new voluntary schools for old ones.—(1) Where the Minister is satisfied that it is expedient that any county school (a) or any voluntary school (b) should be transferred to a new site either because it is not reasonably practicable to make to the existing premises (c) of the school (d) the alterations (e) necessary for securing that they should conform to the prescribed standards (f), or in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relating to housing (g) or to town and country planning (h), the Minister may by order authorise (i) the transfer of the school to the new site; and any transfer so authorised shall not be deemed, for the purposes of this Act, to constitute the discontinuance of the school (k) or the establishment of a new school (l). [243]

(2) Where in connection with any proposals submitted to the Minister

under subsection (2) of section twelve of this Act (m) it is claimed that any school or schools thereby proposed to be established should be maintained (n) by the local education authority (o) as a voluntary school in substitution for another school at the time being maintained by a local education authority as a voluntary school or for two or more such schools which is or are to be discontinued, then, if the Minister is satisfied that the school or schools proposed to be established will be so maintained, he may, if he approves the proposals with or without modifications, by order direct that the school or schools to be established shall be established in substitution for the school or schools to be discontinued, and where such an order is made the provisions of this Act relating to the discontinuance of voluntary schools (p) shall not apply with respect to the discontinuance of the school or schools to be discontinued. [244]

(3) Before making any order under this section the Minister shall consult any local education authority which will, in his opinion, be affected by the making of the order, and the managers or governors (q) of any voluntary school which in his opinion will be so affected; and any such order may impose such conditions on any such local education authority or managers or governors and may contain such incidental and consequential provisions as the Minister thinks fit. [245]

NOTES

This section, which is new, affords a convenient method by which the transfer of a school from one site to another may be effected without having to comply with the somewhat lengthy procedure applying, first, to the discontinuance of the existing school on the old site, and secondly, to the establishment of the new school on the new site. This simplified procedure may be adopted in the following circumstances:—

(1) If the existing school premises cannot reasonably be brought up to the prescribed standards; or

(2) If the transfer is dictated by a movement of population, or by action taken or proposed to be taken relating to housing or town and country planning.

(a) **"County school".**—See section 9 (2), p. 100, *ante*, and note (n) to that section.

(b) **"Voluntary school".**—See section 9 (2), p. 100, *ante*, and note (o) to that section, and section 15, p. 113, *ante*.

(c) **"Existing premises".**—By section 114 (1), p. 255, *post*, "premises" in relation to any school includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house.

(d) **"School".**—See the definition of this term in section 114 (1), p. 255, *post*.

(e) **"Alterations".**—This term also is defined in section 114 (1), p. 255, *post*.

(f) **"Prescribed standards".**—Section 10, p. 103, *ante*, requires the Minister to make regulations requiring local education authorities to secure that the school premises of every school maintained by them conform to such standards as may be prescribed. "Prescribed" is defined by section 114 (1), p. 255, *post*.

(g) **"Enactments relating to housing".**—See, in particular, the Housing Act, 1936, and the Housing (Financial Provisions) Act, 1938, 31 Halsbury's Statutes 569.

(h) **"Town and country planning".**—See the Town and Country Planning Act, 1932; 25 Halsbury's Statutes 470, and the Town and Country Planning (Interim Development) Act, 1943; 29 Halsbury's Statutes 239.

(i) **"The Minister may by order authorise".**—As to the variation or revocation of such an order, see section 111, p. 254, *post*). Before making an order the Minister may, if he thinks fit, hold a local inquiry (section 93, p. 229, *post*). As to the powers of the Minister, in certain circumstances, to make grants or loans to the managers or governors of aided or special agreement schools in the circumstances arising under this section, see sections 104 and 105, pp. 244 and 246, *post*.

(k) **"Discontinuance of the school".**—If it were not for this section a transfer could be effected only by discontinuing the existing school and establishing a new one. To discontinue the maintenance of a county or voluntary school the local education authority would have to comply with the conditions imposed by section 13, p. 109, *ante*, and in the case of a voluntary school the managers or governors would have to comply with section 14, p. 112, *ante*.

(l) **"Establishment of a new school".**—As regards the new school proposed for the new site, in the absence of this section the local education authority in the case of a county school, or the managers or governors in the case of a voluntary school, would have to comply with the procedure set out in section 13, p. 109, *ante*.

(m) **"Sub-section (2) of section twelve of this Act".**—See p. 107, *ante*.

(n) **"Maintained".**—See the definition of "maintain" in section 114 (1) and (2), p. 255, *post*.

(o) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(p) **"Discontinuance of voluntary schools".**—See sections 13 and 14, pp. 109 and 112, *ante*.

(q) **"Managers or governors".**—See sections 17–20 inclusive, pp. 121 to 130, *post*.

Management of Primary Schools and Government of Secondary Schools

17. Constitution of managers and governors and conduct of county schools and voluntary schools.—(1) For every county school (a) and for every voluntary school (b) there shall be an instrument (c) providing for the constitution of the body of managers or governors (d) of the school (e) in accordance with the provisions of this Act (f), and the instrument providing for the constitution of the body of managers of a primary school (g) is in this Act referred to as an instrument of management (h), and the instrument providing for the constitution of the body of governors of a secondary school (i) is in this Act referred to as an instrument of government (k). [246]

(2) The instrument of management or the instrument of government, as the case may be, shall be made in the case of a county school by an order (l) of the local education authority (m) and in the case of a voluntary school by an order of the Minister. [247]

(3) Subject to the provisions of this Act (n) and of any trust deed (o) relating to the school :—

(*a*) every county primary school and every voluntary primary school shall be conducted (p) in accordance with rules of management (q) made by an order of the local education authority ; and

(*b*) every county secondary school and every voluntary secondary school shall be conducted in accordance with articles of government (r) made in the case of a county school by an order of the local education authority and approved by the Minister, and in the case of a voluntary school by an order of the Minister ; and such articles shall in particular determine the functions to be exercised in relation to the school by the local education authority, the body of governors, and the head teacher respectively. [248]

(4) Where it appears to the Minister that any provision included or proposed to be included in the instrument of management, rules of management, instrument of government, or articles of government, for a county school or a voluntary school is in any respect inconsistent with the provisions of any trust deed relating to the school, and that it is expedient in the interests of the school that the provisions of the trust deed should be modified for the purpose of removing the inconsistency, he may by order make such modifications (s) in the provisions of the trust deed as appear to him to be just and expedient for that purpose. [249]

(5) Before making any order under this section in respect of any school, the Minister shall afford to the local education authority and to any other persons appearing to him to be concerned with the management or government of the school an opportunity of making representations to him with respect thereto, and in making any such order the Minister shall have regard to all the circumstances of the school, and in particular to the question whether the school is, or is to be, a primary or secondary school, and, in the case of an existing school, shall have regard to the manner in which the school has been conducted theretofore. [250]

NOTES

Under the law existing prior to 1st April, 1945, the management of schools has been conducted on the following basis :—

(1) *Provided public elementary schools outside London.*—Where the local education authority was the council of a county, each school was required to have a body of managers, four appointed by the county council and two by the minor local authority (defined, as respects any school outside London, by section 170 (15) of the Education Act, 1921, 7 Halsbury's Statutes 213, as the council of any borough, or urban district, or the parish council, or (where there was no parish council) the parish meeting, of any parish which appeared to the county council to be served by the school). Where the local education authority was a borough or urban district council, the authority had a discretionary power to appoint such body of managers as they thought fit (Education Act, 1921, section 30 (1) ; 7 Halsbury's Statutes 146) ;

(2) *Provided public elementary schools in London.*—Every such school was required to have a body of managers either alone or grouped with another school or schools, the number of managers being determined by the metropolitan borough council, after consultation with the local education authority and subject to the Board's approval ; two-thirds being

appointed by the borough council and one-third by the local education authority (Education Act, 1921, section 36 ; 7 Halsbury's Statutes 150) ;

(3) *Non-provided public elementary schools (including London).*—Every non-provided public elementary school was required to have a body of managers consisting of not more than four foundation managers appointed in accordance with section 31 of the Education Act, 1921 ; 7 Halsbury's Statutes 147, and not more than two appointed by the local education authority in the case of a borough or urban district and one each by the local education authority and the minor local authority where the local education authority was a county council. As to the definition of " minor local authority " see paragraph (1), *supra* ; in London the councils of metropolitan boroughs were the minor local authorities. (Education Act, 1921, section 30 (2) ; 7 Halsbury's Statutes 146) ;

(4) *Secondary schools (including junior technical schools) built and maintained by the local education authority.*—In practice such schools have had articles of government, *i.e.*, a code of rules, defining the constitution and functions of the governing body, but not based on statutory sanction ;

(5) *Voluntary secondary schools (including junior technical schools).*—Voluntary schools have for the most part been governed by schemes made by the Board of Education under the Endowed Schools and similar Acts, and such schemes lay down in detail the constitution and functions of the governors.

In the past public elementary schools have included not only the schools which are termed primary schools by the Act but also senior and central schools which, for the future, become secondary schools, along with junior technical schools and secondary schools of the grammar school type, whether provided by the local education authority or not.

The Act now provides for the continuance, in the case of primary schools, of arrangements for management by bodies of managers similar to those which have hitherto existed for public elementary schools, except that, in the case of controlled schools, which will be conducted entirely at public expense, the proportion of foundation managers is to be changed from two-thirds to one-third, the remaining managers being appointed by the local authorities concerned (sections 18 (3) (*a*) and 19 (2) (*a*), pp. 127 and 129, *post*).

Special provision is made to meet the case of secondary schools for which, with the exception of schools which have hitherto been senior elementary schools, there has been no statutory provision relating to their management. The Act provides for all secondary schools to be conducted under instruments and articles of government, of which the first is to prescribe the constitution of the governing body and the second is to define the functions to be exercised by the local education authority, the governors and the head teacher respectively (sub-sections (1) and (3) (*b*) of this section). These instruments and articles of government are to be made, in the case of county secondary schools, by an order made by the local education authority and approved by the Minister and, in the case of voluntary schools, by an order of the Minister (sub-section (3) (*b*), *ibid.*). These provisions should be read with section 67, p. 203, *post*.

Under section 20 (1), p. 129, *post*, arrangements may be made for the constitution of a single governing body for two or more county or voluntary schools, whether primary or secondary, but no such arrangement which embraces a voluntary school may be made without the consent of the managers or governors.

These provisions apply to London subject to the modifications made by section 117, p. 266, *post*.

Ministry of Education Circular 1 (15th August, 1944) reminds local education authorities of the requirements of this section regarding the making of an instrument of management and rules of management for every county primary school, and of an instrument of government and articles of government for every county secondary school, and also of the requirements of sections 18 and 19, pp. 127 and 129, *post*, as to the determination of the constitution and number of managers and governors in such schools. It is suggested that authorities will no doubt find it convenient to consider the general principles on which such instruments, rules and articles are to be framed, and, after such consultations as appear appropriate, to prepare model rules and articles for use in the different types of county schools in their areas The Minister is prepared in the case of articles of government to consider such draft model proposals as may be submitted to him for his approval.

(a) **" County school ".**—See section 9 (2), p. 100, *ante*, and note (n) to that section.

(b) **" Voluntary school ".**—See section 9 (2) and 15, pp. 100 and 113, *ante*, and note (n) to section 9, *ante*.

(c) **" There shall be an instrument ".**—As to the enforcement of a local education authority's duties in this connection, see section 9, p. 100, *ante*.

(d) **" Managers or governors ".**—In addition to this section, see sections 18–20, pp. 127 to 130, *post*. It will be noted that the Act provides for the constitution of a body of managers for every primary school whether it is a county school or a voluntary school. In the past a local education authority which was a council of a borough or urban district had a discretion to appoint a body of managers or not as it thought fit. As to the relationship of the managers of a non-provided school with the local education authority, see the remarks of Lord Haldane, L.C., in *Gillow* v. *Durham County Council* [1913] A.C. 54, at p. 65 ; 19 Digest 560, *32*.

Under section 20, p. 130, *post*, the local education authority may, if it thinks fit, constitute a single governing body for any two or more county schools or voluntary schools though, if one or more voluntary schools are involved in such a proposed arrangement, it may only be made with the consent of the managers or governors.

As to the resignation or removal of a manager or governor, and as to the inspection of the minutes of proceedings of managers or governors, see sub-sections (1) and (3) respectively of section 21, p. 132, *post*, and as to their meetings and proceedings see section 21 (2), *ibid.*, and the Fourth Schedule, p. 285, *post*.

(e) **" School ".**—See the definition of this term in section 114 (1), p. 255, *post*.

(f) **" The provisions of this Act ".**—See sub-sections (2) to (5) of this section, and sections 18 and 19, pp. 127 and 129, *post*.

(g) **" Primary school ".**—This term is defined by section 9 (2), p. 100, *ante*.

(h) **" Instrument of management ".**—See section 18, p. 127, *post*, and the general note to this section. As to the making of the instrument, see sub-section (2) of this section.

(i) **" Secondary school ".**—This term is defined by section 9 (2), p. 100, *ante*.

(k) **" Instrument of government ".**—See section 19, p. 129, *post*, and the general note to

his section As to the making of the instrument, see sub section (2) of this section. The White Paper (Cmd 6523 of 1944) on the Principles of Gover nment in Maintained Secondary Schools, which is quoted below (see note (r), *infra*, gives general guidance in connection with the preparation of instruments, as well as articles, of government

(l) **" Order".**—As to the revocation and variation of such an order, see section 111, p 254, *post* As to the duty of the Minister in cases where the order is to be made by him, see subsection (5) of this section

(m) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p 271, *post* Provision is made in sections 117 and 118, pp 266 and 267, *post*, regarding the application of the Act to London and the Isles of Scilly

(n) **" Subject to the provisions of this Act."**—See in particular sections 23 and 24, pp 134 and 136 *post*, and, as to the management and maintenance of voluntary schools until their category is determined, see section 32, p 150, *post*

(o) **" Trust deed ".**—By section 114 (1), p. 255, *post*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under this Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof As to the modification of a trust deed with which the instrument of management or of government or rules of management or articles of government are inconsistent, see sub section (4) of this section

(p) **" Shall be conducted ".**—As to the powers of the Minister in relation to the enforcement of the duties of the managers and governors, see section 99, p 237, *post*, and as to the determination of disputes, see section 67, p 203, *post* Section 68, p 205, *post*, gives the Minister wide powers to prevent the managers or governors of a school from exercising their functions unreasonably

(q) **" Rules of management ".**—The obligation to conduct primary schools in accordance with rules of management is new, though section 35 (1) of the Education Act, 1921, 7 Halsbury's Statutes 149, enabled a local education authority which appointed managers of a provided public elementary school to impose conditions and restrictions upon the powers which the authority saw fit to confer upon them

In connection with the rules of management, regard should be had to the terms of section 23, p 134, *post*, which specifies the relationship between the managers of the various types of schools and the local education authority in relation to the control of secular instruction and indicates what is included within the scope of the power to control secular instruction

(r) **" Articles of government. "**—See the general note to this section

In connection with the articles of government, regard should be had to the terms of section 23, p 134, *post*, which specifies the relationship between the governors of the various types of schools and the local education authority in relation to the control of secular instruction and indicates what is included within the scope of the power to control secular instruction In particular, the governors of aided secondary schools are, by section 23 (2), *ibid*, placed in a specially favourable position

On 4th May, 1944, the Board of Education presented to Parliament, in accordance with a promise given during the Committee stage of the Bill, a White Paper (Cmd 6523 of 1944) on the principles of government in maintained secondary schools

The White Paper sets out the principles upon which broad agreement was reached in the discussions between the Board of Education and the various interests concerned and serves as a general guide to the preparation of instruments and articles of government In view of its importance the White Paper is quoted in full, *infra*, making only such alterations (which are italicised) as are necessary to adapt the references to clauses of the Bill to the appropriate sections of the Act and to add such other references as appear desirable

(s) **" Modification ".**—The power given by this sub-section to the Minister to modify the provisions of a trust deed is in replacement of sections 32 and 121 of the Education Act, 1921, 7 Halsbury's Statutes 148, 194, and has considerable relation to section 16 of the Charitable Trusts Act, 1853, 2 Halsbury's Statutes 324, the last named however, which confers an indemnity upon trustees who seek and act in accordance with the advice of the Minister, not being repealed Without this provision it would be necessary to make an application to the High Court for a variation of the terms of the trust deed (*In re Queen's School, Chester* [1910] 1 Ch 796, 19 Digest 591, *206*), though if application for advice was made to the Minister under section 16 of the Charitable Trusts Act, 1853, the trustees would be indemnified against an action for breach of trust It will doubtless be necessary for the Minister to make use of his powers in a large number of cases since, where a school becomes a controlled school under section 15, *ante*, the proportion of foundation managers will be reduced under section 18 (3), p 128, *post*, from two thirds to one-third

PRINCIPLES OF GOVERNMENT IN MAINTAINED SECONDARY SCHOOLS

1 INTRODUCTION

1 Under *section 17* of the Education *Act* every county and *voluntary* secondary school is to have an instrument of government providing for the constitution of a body of governors, and is to be conducted under articles of government, which shall in particular determine the functions to be exercised in relation to the school by the *local education authority, the body of governors* and the head teacher respectively

2 Hitherto in the sphere of the education of pupils over eleven years of age there has been a clear distinction between secondary schools falling within the field of higher education and senior or central schools falling within the field of elementary education So far as schools of higher education are concerned there *has been* no statutory provision in the Education Acts relating to *the constitution and powers of governing bodies and head teachers* In a certain number of schools, however, the governance of the school *has been* regulated by a scheme made under the Endowed Schools or Charitable Trusts Acts, and all secondary schools *have been* required as a condition of grant to " be governed and conducted under adequate and suitable rules " So far as elementary schools are concerned the constitution and powers of the body of managers *have been* regulated by sections 30-36 of the Education Act, 1921, and by rules made by the local education authority

3 The recasting of the education system under the Education *Act* extends the term "secondary" to include all schools for senior pupils (*section* 8 (1) (*b*), p 97, *ante*) This will bring into the same administrative field a very large number of schools of a different character and different traditions from the present secondary schools The development of a coherent and consistent way of life for this greatly increased number of schools of varying origins and conditions will not necessarily be on uniform lines The *Act* indeed recognises this fact by requiring the Minister, in exercising his functions under *section* 17, to have regard to all the circumstances of the school and the manner in which it has been conducted heretofore (*sub section* (5))

4 Another important change is the classification of schools into categories of county, controlled special agreement and aided schools (*sections* 9 (2), p 100, *ante*, and 15, p. 113, *ante*) Hitherto schools have been divided into provided and non provided schools, and one implication of the change is that the powers and duties of the local education authority and the governors need to be clearly defined in each case To some extent this is done in the *Act* itself, in other respects it is left to the articles of government But it must be recognised that any division of functions laid down in the articles of government is subject to the overriding provisions of the *Act* for each class of school

5 Nevertheless it would be wrong to lay too much emphasis on the statutory difference between one school and another or one type of school and another Every school of whatever type or category must have an individual life of its own as well as a place in the local system The fact that aided schools are assured under the *Act* of an independence hardly if at all, less than that which they enjoy at present, makes it the more desirable to seek means to secure that reasonable autonomy is enjoyed also by county, controlled and special agreement schools Independence implies not freedom from proper control, but freedom to exercise legitimate and appropriate functions and it is on this principle that *section* 17 of the *Act* recognises for the first time the need for defining the functions which should be exercised by each of the parties concerned in the governance of schools of all kinds (*sub section* (3) (*b*))

6 In fact there are certain general principles which might apply, subject to necessary variations of detail, to all secondary schools, and it was with the object of ascertaining how far such principles can be explicitly stated that the President of the Board of Education invited the various interests concerned to take part in conversations (a) The results of these conversations the general effect of which is stated in the following paragraphs, represent a broad measure of agreement, though they do not commit the bodies concerned They are issued for general guidance when instruments and articles of government come to be prepared

7 One important factor which must be borne in mind is the difference between rural and urban areas and, to some extent between the larger and smaller urban areas A procedure which is possible and desirable in one area may well be inappropriate or impracticable in another The machinery laid down in the *Act* provides, in the case of *voluntary* schools, for consultation by the Minister with the local education authority and other persons concerned (*sub section* (5)), moreover it would undoubtedly be wise for local education authorities to consult various interests in the area before the articles of government for county schools are framed In this way an opportunity will be given for a necessary variation to meet the different circumstances of individual areas and schools

8 It should be noted that under Schedule 1 of the *Act*, p 271, *post*, schemes of divisional administration are to be drawn up, which will be approved by the Minister. These schemes are to define the functions which the divisional executives are to exercise on behalf of the local education authority The nature and extent of this delegation will naturally have reactions on the government of secondary schools, but it will not affect the determination of functions to be exercised by the governing body and the head teacher Consequently, when in the following paragraphs, the term 'local education authority" is used it includes divisional executives exercising delegated powers and duties on behalf of the authority

9 The main issues which have been the subject of conversations can be grouped under the following five headings —

Governing bodies,
Finance,
Appointment and dismissal of teachers and other staff,
Internal organisation and curriculum,
Admission of pupils

In the paragraphs which follow no attempt is made to deal with all the matters to be included in articles of government Thus, under the first heading, there will necessarily be rules regarding the qualifications and terms of appointment of governors on which there is no disagreement and which would normally find a place in all articles of government Similarly no reference is made to religious education, in regard to which explicit directions are included in the *Act* The matters dealt with in this memorandum are those which bulk most largely in the problem of school government and in regard to which the formulation of general principles in consequently most necessary

II GOVERNING BODIES

10 *Constitution* —All secondary schools are to be governed by governing bodies specially constituted for the purpose (*section* 19, p 129, *post*) In the case of county schools the governing body is to consist of such number of persons appointed in such manner as the local education authority may determine (*section* 19 (1) *ibid*), in the case of *voluntary* schools the governing body is to consist of such number of persons as the Minister may determine, subject to compliance with the prescribed proportions of foundation governors and of governors appointed by the local education authority (*section* 18 (2), *ibid*)

11 *Composition* —In all schools it may be assumed that the governing body will include —

(i) adequate representation of the local education authority (b),
(ii) other persons whose qualifications are such as to enable them to play a useful part in the government of a secondary school

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(a) Those consulted included representatives of the various associations of local education authorities the London County Council, the Association of Directors and Secretaries for Education, the National Union of Teachers, the Governing Bodies Associations, the London Aided Schools Association, the Aided Schools Committee and the Joint Four Secondary Associations

(b) The authority's representatives will not necessarily be in all cases members of the authority

The practice of allowing a limited number of co opted members nominated by the governing body has proved of advantage and might be continued in appropriate cases

In the case of girls' and mixed secondary schools a proportion of women should be included on the governing bodies

Among the persons referred to under (ii) above it would be appropriate to appoint a representative of a university or university college—particularly of the local university where one exists, and the inclusion of one or more persons associated with the commercial and industrial life of the district is desirable

There is general agreement that the interests of the teaching staff of the school or schools, as well as of parents and old scholars, should be reflected in the composition of the governing body The majority of bodies consulted hold that this can be secured without the staff or parents' and old scholars associations having the right to nominate governors for the purpose

One section holds that governors should be specially nominated by the teaching staff and by parents' and old scholars' associations

12 *Size* —No precise guidance as to the size of the governing body can be given In the past governing bodies have sometimes tended to be too large and in consequence their transactions have in some cases been formal and stereotyped The governing body should be large enough to ensure that the various interests are adequately represented, but small enough for the effective conduct of business in such a way that all members can play an active part

13 *Grouping* —*Section* 20, p 120, *post*, provides for the grouping of schools under a single governing body and there can be no doubt that, with the great increase in the number of secondary schools, such grouping will frequently be necessary In some cases the schools of a particular foundation or of a particular denominational character will most conveniently be grouped together, and it should be noted that *a voluntary* school cannot be grouped with another school without the consent of the governors (*proviso to section* 20 (1), *ibid*) Usually, however, there will be solid advantage in grouping schools on a geographical or regional basis, schools of all types finding a place in an individual group In this way experience will be brought to bear on the problems of self government in the newer types of secondary schools, while community of interests, sharing of teaching staffs and transfer of pupils between the various types will be facilitated Some fear has been expressed that under such an arrangement the individual character of each type of school might tend to be blurred, and the suggestion has been made that a nucleus of governors might be formed for the group with one or two additional members for each separate type of school, who would attend only when the affairs of their particular schools were being considered

III FINANCE

14 The practice will no doubt generally obtain by which governors prepare estimates covering a suitable period and submit them to the local education authority Within the broad headings of the approved estimate the governors should have latitude to exercise reasonable discretion It may be desirable that a small margin for contingencies should be allowed, particularly under the heading of "books, apparatus and stationery", in any case the allowance under this heading, which is commonly calculated on a capitation basis, should not be too rigidly defined and a school should be entitled to present a case for a higher rate to meet special difficulties and developments There is general agreement that the school library the special needs of which have often been overlooked in the past, should be given a separate allowance

IV APPOINTMENT AND DISMISSAL OF STAFF

15 *Teaching Staff* —Under the provisions of the Act the appointment of teachers in county, controlled or special agreement schools is, with certain reservations, placed under the control of the local education authority (*section* 24, p 136, *post* In a controlled school the authority are obliged before making an appointment of a head teacher, to inform the governors as to the person proposed to be appointed and to consider any representations made by them (*section* 27 (3), p 143, *post*) The dismissal of teachers rests with the local education authority (*section* 24 (1), p 136, *post*) In aided schools the functions of the authority and the governors in regard to the appointment and dismissal of teachers are to be regulated by the articles of government, subject to certain mandatory or discretionary rights reserved to the authority and governors (*section* 24 (2), p 136, *post*)

16 *The appointment and dismissal of teachers, other than reserved teachers, may be* conveniently considered separately for head masters or head mistresses and assistants —

(*a*) *Appointment of head master or head mistress* —In schools provided by local education authorities the practice has in the past varied very considerably In some areas the appointment has been made by the governing body subject to confirmation by the authority, in others the authority has appointed in consultation with the governors It is desirable that, so far as possible, some uniform practice should obtain and there is a wide measure of agreement in favour of associating the governors and the authority both at the stage of drawing up the short list and also of making the final appointment The following two alternative methods appear to command acceptance —

(i) Under the first method the governors consider the applications a representative of the authority being present, and submit three names to the authority The appropriate committee of the authority than makes the final appointment, a member of the governing body being present,

(ii) Under the second method, the merits of which are being increasingly recognised, a joint committee is set up of an equal number of members of the governing body and the authority, under the chairmanship of a person nominated by the authority, to draw up the short list and, at a second meeting, to make the appointment

One or other of these two methods would be suitable for county, controlled or special agreement schools and, with modifications, might be appropriate also in the case of aided schools In the case of aided schools the proportions of members on a joint committee would no doubt be varied and the nomination of chairman be given to the governors at one or both stages of the appointment

(*b*) *Dismissal of head master or head mistress* —The normal procedure in the case of dismissal would be as follows —

(*i*) *The resolution would be taken by the governing body who would also have power to* suspend in the case of misconduct or for other urgent causes

(ii) The resolution would be passed at two meetings, held at an interval of not less than fourteen days, by not less than two thirds of the governing body present and voting,

(iii) The resolution could not take effect (except as otherwise provided in the *Act*), until it had been accepted by the local education authority in the case of county controlled or special agreement schools, or the consent of the authority had been obtained in the case of aided schools (*section* 24, p 136, *post*)

It would be used to provide that the head master or head mistress should have the right of appeal to the local education authority in cases where the authority's approval or consent was required,

(iv) The local education authority should have the power of dismissal on their own motion (except as otherwise provided in the *Act*) in county, controlled and special agreement schools and to require dismissal in aided schools,

(v) It would be usual to provide that the head master or head mistress should be entitled to appear accompanied by a friend at any meeting of the governing body or the local education authority, at which his or her dismissal was to be considered, and should be given full notice of such meetings,

(vi) Except in cases of misconduct or other urgent cause dismissal would be subject to notice under the terms of appointment

(*c*) *Appointment of assistant masters or mistresses* —The appointment of assistant masters and mistresses in county, controlled or special agreement schools is to be under the control of the local education authority (*section* 24 (1), p 136, *post*), in aided schools it is to be made by the governors, with the consent of the authority where so provided (*section* 24 (2), *ibid*) The usual practice will be for appointments to be made within the financial limits of the approved estimates, by the governors in full consultation with the head master or head mistress subject to confirmation by the local education authority Vacancies should generally be notified in the first instance to the local education authority, in order that a multiplicity of advertisements may be avoided The local education authority should be in a position to secure interchangeability of staff and appointment from a pool, particularly in the case of junior posts

(*d*) *Dismissal of assistant masters or mistresses* —The procedure would be generally similar to that in the case of the head master or head mistress (*but see sections* 27 (5) *and* 28 (2), pp 143 *and* 145, *post*) It need not, however, necessarily be so elaborate provided that opportunity is given for the assistant to appear before a meeting of the governors accompanied by a friend and to appeal to the local education authority

17 *Non teaching staff* —The appointment and dismissal of staff other than teachers fall under two headings—(*a*) caretakers and maintenance staff and (*b*) clerks to governing bodies

(*a*) *Caretakers and maintenance staff* —In county, controlled or special agreement schools appointments and dismissals are to be made by the local education authority, in the case of aided schools the authority may give directions to the governors (*as regards voluntary schools see section* 22 (3) p 133, *post*) In practice the actual selection of persons to be appointed would no doubt rest with the governors on the advice of the head master or head mistress, subject to the approved estimates not being exceeded and the conditions of appointment being in accordance with the usual conditions for the area as regards wages and other matters The authority should be in a position to require, at any rate in the case of county, controlled or special agreement schools, that the appointment be made from a pool

(*b*) *Clerks* —In county, controlled or special agreement schools it would be usual for the chief education officer (*see section* 88, p 225, *post*) or his representative to be the clerk to the governing body, and, in view of the growing complexity of school business and the need for close co operation with the authority there are advantages in following the same practice in aided schools, particularly where the circumstances do not justify the appointment of a full time clerk The governors would, however, appoint their own clerk for foundation work and in some cases it may be found desirable, as at present, for the foundation and school work to be entrusted to the same person

V INTERNAL ORGANISATION AND CURRICULUM

18 *Division of functions* —The local education authority would have the right, in framing the development plan for the area (*see section* 11 p 103, *ante*) and subsequently, to settle the general educational character of the school and its place in the local system Subject to this general responsibility the governors would have general direction of the conduct and curriculum of the school The head master or head mistress would control the internal organisation, management and discipline of the school, and would also have the power of suspending pupils subject to a report being made forthwith to the governors and the local education authority

19 *Relations of governing body, head master or head mistress and chief education officer* — A particular aspect of this problem concerns the relations which are to exist between the head master or head mistress, the governing body and the chief education officer The general lines should be as follows —

(i) There should be free consultation at all times between the head master or head mistress and the chairman of the governing body,

(ii) All proposals and reports affecting the conduct and curriculum of the school should be submitted formally to the governing body, which should meet at reasonably frequent intervals The chief education officer or his representative should be informed as long as possible beforehand and furnished with a copy of the proposals or report

(iii) Decisions by the chairman of the governing body should be limited to urgent matters and should be reported without delay to the governing body,

(iv) The head master or head mistress should be entitled to attend throughout all meetings of the governing body, except on such occasions and for such times as the governing body might for good cause decide otherwise,

(v) Free consultation and co operation should exist between the head master or head mistress and the chief education officer on matters affecting the welfare of the school,

(vi) Suitable arrangements should be made for enabling the teaching staff to submit their views or proposals to the governing body through the head master or head mistress

20 *School holidays* —The fixing of school holidays (*see section* 23, p 134, *post*) is a matter of some importance, particularly in view of the provision that pupils who attain any age during the

term of the school are deemed not to have attained that age until the end of term In order to secure the necessary uniformity it will no doubt be necessary that the local education authority should fix the school terms, but the governors should be empowered to grant a limited number of occasional holidays at their discretion

VI ADMISSION OF PUPILS

21 *Procedure* —The abolition of tuition fees in all maintained schools (*section* 61 (1), p 196, *post*) will call for re-examination of the method adopted for deciding the type of secondary education which individual pupils are to receive It is important that the wishes of parents should continue to be taken into account and effect given to them in so far as is compatible with the attainments and promise of their children and with the claims of other children The local education authority alone will have all the data on which to reach a decision on these matters and the ultimate responsibility for deciding which type of secondary education an individual pupil should follow must therefore rest with them It is however, generally agreed that the governors and the head master or head mistress should play an essential part in the selection of all pupils for their particular school While it is not possible at present to dogmatise on methods of precedure, in regard to which a variety of views have been expressed, it is possible to indicate two solutions upon one or other of two lines according to the nature of the area concerned

In the more compact type of area the local education authority might undertake centrally the task of deciding the broad type of education for which individual children are suited Account would have to be taken of school records, teachers' reports, and parents' expressed wishes When a decision on this question has been reached, parents should be free within reasonable limits to choose the particular school of the appropriate type, which they desire their children to attend and governors should be given an opportunity of expressing any views they might have as to the admission of pupils desiring to enter their schools

Alternatively, in the more scattered areas the local education authority might refer pupils on leaving the primary schools to a district board consisting of the heads of primary and secondary schools of the various types, assisted by one or more representatives of the local education authority This board on the basis of school records and other available information (including the parents' wishes), would advise the authority both on the general type of education most suitable for the child and on the particular school to which, subject to any views expressed by the governors, he or she should be admitted

22 *Extra district pupils* —Special arrangements may well be necessary to meet the case of pupils who may desire admission to a school within the area of another authority There are within the county and municipal systems certain schools which have built up a tradition of boarding education for pupils drawn from a wide area of the country In view of the importance of meeting the reasonable wishes of parents and of preserving so far as possible the traditions of particular schools, local education authorities will no doubt be ready to co operate in facilitating the admission of extra district pupils, whether as day pupils or borders, and to make the necessary financial adjustments, for which provision is made in *section* 106 of the *Act*

VII INTERPRETATION

23 The chief object of articles of government will be, as has already been stated to determine the respective functions of the local education authority, the governing body and the head teacher in relation to the school But, however, carefully the determination is made, disputes are liable to arise and this raises the question of interpretation It has been customary in the past to include in articles of government a clause dealing with questions arising under the articles In view of the provisions of *section* 67 of the *Act* relating to disputes between local education authorities and governors this clause will no longer be appropriate It is, however, to be hoped that, given the co operation which is essential to any successful scheme of school government, disputes on the determination of functions will be of rare occurrence "

18. Managers of primary schools.—(1) The instrument of management (a) for every county primary school (b) serving an area in which there is a minor authority (c) shall provide for the constitution of a body of managers (d) consisting of such number of persons, not being less than six (e), as the local education authority (f) may determine

Provided that two-thirds of the managers shall be appointed by the local education authority and one-third shall be appointed by the minor authority [251]

(2) The instrument of management for every county primary school serving an area in which there is no minor authority (g) shall provide for the constitution of a body of managers constituted in such manner as the local education authority may determine (h) [252]

(3) The instrument of management for every voluntary primary school (i) shall provide for the constitution of a body of managers consisting of such number of persons not being less than six as the Minister may, after consultation with the local education authority, determine (k)

Provided that—

(*a*) if the school is an aided school (l) or a special agreement school (m) two-thirds of the managers shall be foundation managers (n), and, if the school is a controlled school (o), one-third of the managers shall be foundation managers ,

(*b*) where the school serves an area in which there is a minor

authority (p), then of the managers who are not foundation managers not less than one-third nor more than one-half shall be appointed by the minor authority and the remainder shall be appointed by the local education authority ; and

(*c*) where the school serves an area in which there is no minor authority (q), all the managers who are not foundation managers shall be appointed by the local education authority.

[253]

NOTES

The general note to section 17, p 121, *ante*, summarises the changes made by the Act in the law applying to the management and government of both primary and secondary schools

The main change affecting the management of primary schools relates to the management of controlled schools Since these schools are to be conducted under the Act entirely at the public expense, the proportion of foundation managers is to be changed from two-thirds to one-third, the remaining managers being appointed by the local authorities concerned (subsection (3)).

The legal obligation imposed by the section to have an instrument of management is also new, the powers and duties relating to the appointment of managers of public elementary schools under the old law being derived directly from section 30 of the Education Act, 1921 ; 7 Halsbury's Statutes 146.

(a) **" Instrument of management ".**—The requirement that there shall be an instrument of management providing for the constitution of a body of managers for every county primary school and voluntary primary school is imposed by section 17 (1), p 121, *ante* As to the manner in which the instrument of management is to be made, see section 17 (2), *ibid.* See also section 17 (4), *ibid* , as to the modification of the provisions of any trust deed with which the instrument of management is inconsistent

The instrument of management only deals with the constitution of the body of managers The conduct of the school itself (whether a county school or a voluntary school) is to be controlled by rules of management made by an order of the local education authority under section 17 (3) (*a*), p 121, *ante*

Under section 20, p. 130, *post*, the local education authority may constitute a single governing body for two or more schools, in which case the constitution of the body may differ from those referred to in this section.

Special powers are given to the Minister by section 99 (2), p. 237, *post*, where it appears to him that by reason of the default of any person there is no properly constituted body of managers or governors of any county school or voluntary school.

(b) **" County primary school ".**—As to the meaning of this term, see section 9 (2), p. 100, *ante*

(c) **" Minor authority ".**—This sub-section replaces the first paragraph of section 30 (1) of the Education Act, 1921 , 7 Halsbury's Statutes 146. It applies only where the local education authority is the council of a county. " Minor authority " is defined by section 114 (1), p. 255, *post*, in relation to a school maintained by a local education authority for a county, as the council of any borough (other than a county borough) or urban district or rural parish which appears to the local education authority to be the area served by the school Where there is no parish council, the parish meeting is to be the minor authority, and if the authority is of opinion that the school serves the area of two or more minor authorities, the expression is to be construed as referring to all those minor authorities acting jointly. If the authorities concerned in the joint appointment of managers are unable to agree the Minister may act in default ; see section 99 (2), p 237, *post*

(d) **" Body of managers ".**—See note (d) to section 17, p. 122, *ante*

(e) **" Not being less than six ".**—The requirement that the body of managers shall consist of not less than six persons varies from the previous law in that under the Education Act, 1921, section 30 , 7 Halsbury's Statutes 146, the number of managers was not to exceed six, unless increased under *ibid.* section 30 (5) (*b*) , 7 Halsbury's Statutes 147

(f) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*

(g) **" An area in which there is no minor authority ".**—See note (c), *supra*. This sub-section applies to areas where the local education authority is the council of a county borough.

(h) **" May determine ".**—Though the local education authority appears to have an absolute discretion as to the constitution of a body of managers, there must be an instrument of management and there must be a body of managers The duty so imposed upon the local education authority may be enforced by the Minister under section 99, p 237, *post* It is questionable whether the local education authority may, if it so wishes, constitute its education committee or one of its education committees appointed under Part II of the First Schedule, p. 273, *post*, as the body of managers under this sub-section. If an authority should purport so to act and the Minister is of opinion that this would not be a properly constituted body under the sub-section, he may take steps under section 99 (2), p. 237, *post*, to remedy the position.

Alternatively, the Minister might regard such action in particular circumstances as an unreasonable exercise of the authority's functions, and take such steps as he might think desirable under section 68, p. 205, *post*.

(i) **" Voluntary primary school ".**—As to the meaning of this term, see section 9 (2), p. 100, *ante*

(k) **" As the Minister may . . . determine ".**—It will be necessary for a consultation to take place between the Minister and the local education authority in connection with the constitution of a body of managers for every voluntary primary school though, in practice, the local education authority will no doubt submit to the Minister a list for his approval.

(l) **" Aided school ".**—See note (c) to section 15, p 118, *ante*.

(m) **" Special agreement school ".**—See note (d) to section 15, p. 118, *ante*.

(n) **"Foundation managers".**—By section 114 (1), p. 255, *post*, the term means, in relation to any voluntary school, managers appointed otherwise than by a local education authority or a minor authority for the purpose of securing, so far as is practicable, that the character of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto. Unless the context otherwise requires, any references in the Act to "managers" will, in relation to any functions thereby conferred or imposed exclusively on foundation managers, be construed as references to such managers. This subsection replaces sections 30 (2) and 31 of the Education Act, 1921; 7 Halsbury's Statutes 146, 147. In general, with modifications to adapt the provision the new system, it is a re-enactment of previous law except as regards voluntary schools which become controlled schools under the Act, and senior public elementary schools which become secondary schools.

(o) **"Controlled school".**—See note (b) to section 15, p. 117, *ante*, and the general note to this section. As to the modification of trust deeds which are inconsistent with the provision that only one third of the managers are to be foundation managers, see section 17 (4), p. 121, *ante*.

(p) **"An area in which there is a minor authority".**—This refers to the area of a local education authority which is the council of a county; see note (c), *supra*. The system of appointment of managers other than foundation managers in the case of voluntary primary schools in county areas may be summarised as follows:—

(1) *General*.—The number of managers must be a multiple of three;

(2) *Aided schools and special agreement schools*.—If the total number of managers is six, one manager is to be appointed by the local education authority and one by the minor authority; if it is nine, one will be appointed by the minor authority and two by the local education authority; if it is twelve, the numbers will be two and two respectively; and so on.

(3) *Controlled schools*.—If the total number of managers is six, two managers are to be appointed by the local education authority and two by the minor authority; if it is nine, the numbers may be three and three respectively, or four or two. In the event of failure to agree in such a case, the Minister may act in default under section 99 (2), p. 237, *post*.

(q) **"An area in which there is no minor authority".**—This refers to the area of a local education authority which is the council of a county borough: see notes (c) and (g), *supra*. In county boroughs all the managers (other than foundation managers) of voluntary primary schools are to be appointed by the local education authority, namely, one-third in the case of aided schools and special agreement schools, and two-thirds in the case of controlled schools.

19. Governors of secondary schools.—(1) The instrument of government (a) for every county secondary school (b) shall provide for the constitution of a body of governors (c) consisting of such number of persons appointed in such manner as the local education authority (d) may determine (e). [254]

(2) The instrument of government for every voluntary secondary school (f) shall provide for the constitution of a body of governors of the school consisting of such number of persons (g) as the Minister may after consultation with the local education authority determine:

Provided that—

(*a*) where the school is a controlled school (h), one-third of the governors shall be foundation governors (i) and two-thirds of the governors shall be appointed by the local education authority;

(*b*) where the school is an aided school (j) or a special agreement school (k), two-thirds of the governors shall be foundation governors and one-third of the governors shall be appointed by the local education authority. [255]

NOTES

The general note to section 17, p. 121, *ante*, summarises the changes made by the Act in the law applying to the management and government of both primary and secondary schools.

As regards secondary schools, the Act makes statutory provision for the first time for the management of secondary schools (other than secondary schools which were formerly senior public elementary schools) by means of instruments and articles of government.

(a) **"Instrument of government".**—The requirement that there shall be an instrument of government providing for the constitution of a body of governors for every county secondary school and voluntary secondary school is imposed by section 17 (1), p. 121, *ante*. As to the manner in which the instrument of government is to be made, see section 17 (2), p. 121, *ante*. See also section 17 (4), *ibid.*, as to the modification of the provisions of any trust deed with which the instrument of government is inconsistent. Since this is the first occasion (except as regards schools which were formerly senior public elementary schools) on which statutory provision has been made for regulating the government of secondary schools it will doubtless be necessary to have frequent recourse to the Minister's powers of modification during the period after this part of the Act comes into operation.

The instrument of government only deals with the constitution of the body of governors. By section 17 (3) (*b*), p. 121, *ante*, the conduct of the school itself (whether a county school or a voluntary school) is to be controlled by articles of government made—

(*a*) in the case of a county school by an order of the local education authority approved by the Minister, and

(*b*) in the case of a voluntary school by an order of the Minister.

(ii) The resolution would be passed at two meetings, held at an interval of not less than fourteen days, by not less than two thirds of the governing body present and voting;

(iii) The resolution could not take effect (except as otherwise provided in the *Act*), until it had been accepted by the local education authority in the case of county, controlled or special agreement schools, or the consent of the authority had been obtained in the case of aided schools (*section* 24, p 136, *post*)

It would be used to provide that the head master or head mistress should have the right of appeal to the local education authority in cases where the authority's approval or consent was required,

(iv) The local education authority should have the power of dismissal on their own motion (except as otherwise provided in the *Act*) in county, controlled and special agreement schools, and to require dismissal in aided schools,

(v) It would be usual to provide that the head master or head mistress should be entitled to appear accompanied by a friend at any meeting of the governing body or the local education authority, at which his or her dismissal was to be considered, and should be given full notice of such meetings,

(vi) Except in cases of misconduct or other urgent cause dismissal would be subject to notice under the terms of appointment

(*c*) *Appointment of assistant masters or mistresses* —The appointment of assistant masters and mistresses in county, controlled or special agreement schools is to be under the control of the local education authority (*section* 24 (1), p 136, *post*), in aided schools it is to be made by the governors, with the consent of the authority where so provided (*section* 24 (2), *ibid*) The usual practice will be for appointments to be made within the financial limits of the approved estimates, by the governors in full consultation with the head master or head mistress subject to confirmation by the local education authority Vacancies should generally be notified in the first instance to the local education authority, in order that a multiplicity of advertisements may be avoided The local education authority should be in a position to secure interchangeability of staff and appointment from a pool, particularly in the case of junior posts

(*d*) *Dismissal of assistant masters or mistresses* —The procedure would be generally similar to that in the case of the head master or head mistress (*but see sections* 27 (5) *and* 28 (2), pp 143 *and* 145, *post*) It need not, however, necessarily be so elaborate provided that opportunity is given for the assistant to appear before a meeting of the governors accompanied by a friend and to appeal to the local education authority.

17 *Non-teaching staff* —The appointment and dismissal of staff other than teachers fall under two headings—(*a*) caretakers and maintenance staff and (*b*) clerks to governing bodies

(*a*) *Caretakers and maintenance staff* —In county, controlled or special agreement schools appointments and dismissals are to be made by the local education authority, in the case of aided schools the authority may give directions to the governors (*as regards voluntary schools see section* 22 (3), p 133, *post*) In practice the actual selection of persons to be appointed would no doubt rest with the governors on the advice of the head master or head mistress, subject to the approved estimates not being exceeded and the conditions of appointment being in accordance with the usual conditions for the area as regards wages and other matters The authority should be in a position to require, at any rate in the case of county, controlled or special agreement schools, that the appointment be made from a pool

(*b*) *Clerks* —In county, controlled or special agreement schools it would be usual for the chief education officer (*see section* 88, p 225, *post*) or his representative to be the clerk to the governing body, and, in view of the growing complexity of school business and the need for close co-operation with the authority, there are advantages in following the same practice in aided schools, particularly where the circumstances do not justify the appointment of a full-time clerk The governors would, however, appoint their own clerk for foundation work and in some cases it may be found desirable, as at present, for the foundation and school work to be entrusted to the same person

V. INTERNAL ORGANISATION AND CURRICULUM

18 *Division of functions* —The local education authority would have the right, in framing the development plan for the area (*see section* 11 p 103, *ante*) and subsequently, to settle the general educational character of the school and its place in the local system Subject to this general responsibility the governors would have general direction of the conduct and curriculum of the school The head master or head mistress would control the internal organisation, management and discipline of the school, and would also have the power of suspending pupils subject to a report being made forthwith to the governors and the local education authority.

19. *Relations of governing body, head master or head mistress and chief education officer* — A particular aspect of this problem concerns the relations which are to exist between the head master or head mistress, the governing body and the chief education officer The general lines should be as follows —

(i) There should be free consultation at all times between the head master or head mistress and the chairman of the governing body,

(ii) All proposals and reports affecting the conduct and curriculum of the school should be submitted formally to the governing body, which should meet at reasonably frequent intervals The chief education officer or his representative should be informed as long as possible beforehand and furnished with a copy of the proposals or report,

(iii) Decisions by the chairman of the governing body should be limited to urgent matters and should be reported without delay to the governing body,

(iv) The head master or head mistress should be entitled to attend throughout all meetings of the governing body, except on such occasions and for such times as the governing body might for good cause decide otherwise,

(v) Free consultation and co operation should exist between the head master or head mistress and the chief education officer on matters affecting the welfare of the school,

(vi) Suitable arrangements should be made for enabling the teaching staff to submit their views or proposals to the governing body through the head master or head mistress

20 *School holidays* —The fixing of school holidays (*see section* 23, p 134, *post*) is a matter of some importance, particularly in view of the provision that pupils who attain any age during the

term of the school are deemed not to have attained that age until the end of term In order to secure the necessary uniformity it will no doubt be necessary that the local education authority should fix the school terms, but the governors should be empowered to grant a limited number of occasional holidays at their discretion.

VI. ADMISSION OF PUPILS

21 *Procedure*.—The abolition of tuition fees in all maintained schools (*section* 61 (1), *p. 196, post*) will call for re-examination of the method adopted for deciding the type of secondary education which individual pupils are to receive. It is important that the wishes of parents should continue to be taken into account and effect given to them, in so far as is compatible with the attainments and promise of their children and with the claims of other children. The local education authority alone will have all the data on which to reach a decision on these matters and the ultimate responsibility for deciding which type of secondary education an individual pupil should follow must therefore rest with them. It is, however, generally agreed that the governors and the head master or head mistress should play an essential part in the selection of all pupils for their particular school. While it is not possible at present to dogmatise on methods of precedure, in regard to which a variety of views have been expressed, it is possible to indicate two solutions upon one or other of two lines according to the nature of the area concerned.

In the more compact type of area the local education authority might undertake centrally the task of deciding the broad type of education for which individual children are suited. Account would have to be taken of school records, teachers' reports, and parents' expressed wishes When a decision on this question has been reached, parents should be free within reasonable limits to choose the particular school of the appropriate type, which they desire their children to attend, and governors should be given an opportunity of expressing any views they might have as to the admission of pupils desiring to enter their schools.

Alternatively, in the more scattered areas the local education authority might refer pupils on leaving the primary schools to a district board consisting of the heads of primary and secondary schools of the various types, assisted by one or more representatives of the local education authority. This board, on the basis of school records and other available information (including the parents' wishes), would advise the authority both on the general type of education most suitable for the child and on the particular school to which, subject to any views expressed by the governors, he or she should be admitted.

22. *Extra district pupils* :—Special arrangements may well be necessary to meet the case of pupils who may desire admission to a school within the area of another authority. There are within the county and municipal systems certain schools which have built up a tradition of boarding education for pupils drawn from a wide area of the country In view of the importance of meeting the reasonable wishes of parents and of preserving so far as possible the traditions of particular schools, local education authorities will no doubt be ready to co-operate in facilitating the admission of extra-district pupils, whether as day pupils or borders, and to make the necessary financial adjustments, for which provision is made in *section* 106 of the *Act*.

VII. INTERPRETATION

23. The chief object of articles of government will be, as has already been stated, to determine the respective functions of the local education authority, the governing body and the head teacher in relation to the school. But, however, carefully the determination is made, disputes are liable to arise and this raises the question of interpretation. It has been customary in the past to include in articles of government a clause dealing with questions arising under the articles In view of the provisions of *section* 67 of the *Act* relating to disputes between local education authorities and governors this clause will no longer be appropriate. It is, however, to be hoped that, given the co-operation which is essential to any successful scheme of school government, disputes on the determination of functions will be of rare occurrence ".

18. Managers of primary schools.—(1) The instrument of management (a) for every county primary school (b) serving an area in which there is a minor authority (c) shall provide for the constitution of a body of managers (d) consisting of such number of persons, not being less than six (e), as the local education authority (f) may determine :

Provided that two-thirds of the managers shall be appointed by the local education authority and one-third shall be appointed by the minor authority. [251]

(2) The instrument of management for every county primary school serving an area in which there is no minor authority (g) shall provide for the constitution of a body of managers constituted in such manner as the local education authority may determine (h). [252]

(3) The instrument of management for every voluntary primary school (i) shall provide for the constitution of a body of managers consisting of such number of persons not being less than six as the Minister may, after consultation with the local education authority, determine (k) :

Provided that—

(*a*) if the school is an aided school (l) or a special agreement school (m) two-thirds of the managers shall be foundation managers (n), and, if the school is a controlled school (o), one-third of the managers shall be foundation managers ;

(*b*) where the school serves an area in which there is a minor

authority (p), then of the managers who are not foundation managers not less than one-third nor more than one-half shall be appointed by the minor authority and the remainder shall be appointed by the local education authority, and

(c) where the school serves an area in which there is no minor authority (q), all the managers who are not foundation managers shall be appointed by the local education authority

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The general note to section 17, p 121, *ante*, summarises the changes made by the Act in the law applying to the management and government of both primary and secondary schools

The main change affecting the management of primary schools relates to the management of controlled schools Since these schools are to be conducted under the Act entirely at the public expense, the proportion of foundation managers is to be changed from two thirds to one third, the remaining managers being appointed by the local authorities concerned (sub section (3))

The legal obligation imposed by the section to have an instrument of management is also new, the powers and duties relating to the appointment of managers of public elementary schools under the old law being derived directly from section 30 of the Education Act, 1921, 7 Halsbury's Statutes 146

(a) **"Instrument of management".**—The requirement that there shall be an instrument of management providing for the constitution of a body of managers for every county primary school and voluntary primary school is imposed by section 17 (1), p 121 *ante* As to the manner in which the instrument of management is to be made, see section 17 (2), *ibid* See also section 17 (4), *ibid*, as to the modification of the provisions of any trust deed with which the instrument of management is inconsistent

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(*b*) ***"County primary school".***—*As to the meaning of this term, see section 9 (2), p 100, ante*

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(d) **"Body of managers"**—See note (d) to section 17, p 122, *ante*

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(f) **"Local education authority".**—*See section 6, p 87, ante*, and the First Schedule, p 271 *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(*g*) **"An area in which there is no minor authority".**—See note (c), *supra* This sub section applies to areas where the local education authority is the council of a county borough

(h) **"May determine".**—Though the local education authority appears to have an absolute discretion as to the constitution of a body of managers, there must be an instrument of management *and there must be a body of managers* The duty so imposed upon the local education authority may be enforced by the Minister under section 99, p 237, *post* It is questionable whether the local education authority may, if it so wishes, constitute its education committee or one of its education committees appointed under Part II of the First Schedule, p 273, *post*, as the body of managers under this sub section If an authority should purport so to act and the Minister is of opinion that this would not be a properly constituted body under the sub-section, he may take steps under section 99 (2), p 237, *post*, to remedy the position

Alternatively, the Minister might regard such action in particular circumstances as an unreasonable exercise of the authority's functions, and take such steps as he might think desirable under section 68 p 205, *post*

(i) **"Voluntary primary school".**—As to the meaning of this term, see section 9 (2), p 100, *ante*

(k) **"As the Minister may . . . determine".**—It will be necessary for a consultation to take place between the Minister and the local education authority in connection with the constitution of a body of managers for every voluntary primary school though, in practice, the local education authority will no doubt submit to the Minister a list for his approval

(*l*) **"Aided school".**—See note (c) to section 15, p 118, *ante*

(m) **"Special agreement school".**—See note (d) to section 15, p 118, *ante*

(n) **"Foundation managers".**—By section 114 (1), p 255, *post*, the term means, in relation to any voluntary school, managers appointed otherwise than by a local education authority or a minor authority for the purpose of securing, so far as is practicable, that the character of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto. Unless the context otherwise requires, any references in the Act to "managers" will, in relation to any functions thereby conferred or imposed exclusively on foundation managers, be construed as references to such managers This subsection replaces sections 30 (2) and 31 of the Education Act, 1921, 7 Halsbury's Statutes 146, 147. In general, with modifications to adapt the provision the new system, it is a re-enactment of previous law except as regards voluntary schools which become controlled schools under the Act, and senior public elementary schools which become secondary schools.

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(3) *Controlled schools*—If the total number of managers is six, two managers are to be appointed by the local education authority and two by the minor authority, if it is nine, the numbers may be three and three respectively, or four or two. In the event of failure to agree in such a case, the Minister may act in default under section 99 (2), p. 237, *post*.

(q) **"An area in which there is no minor authority".**—This refers to the area of a local education authority which is the council of a county borough: see notes (c) and (g), *supra*. In county boroughs all the managers (other than foundation managers) of voluntary primary schools are to be appointed by the local education authority, namely, one-third in the case of aided schools and special agreement schools, and two thirds in the case of controlled schools

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(2) The instrument of government for every voluntary secondary school (f) shall provide for the constitution of a body of governors of the school consisting of such number of persons (g) as the Minister may after consultation with the local education authority determine:

Provided that—

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(*b*) where the school is an aided school (j) or a special agreement school (k), two-thirds of the governors shall be foundation governors and one-third of the governors shall be appointed by the local education authority. **[255]**

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(*a*) in the case of a county school by an order of the local education authority approved by the Minister, and

(*b*) in the case of a voluntary school by an order of the Minister.

The articles of government (see note (r) to section 17, p. 123, *ante*) will in particular determine the functions to be exercised in relation to the school by the local education authority, the body of governors and the head teacher respectively.

Under section 20, p 130, *post*, the local education authority may constitute a single governing body for two or more schools, in which case the constitution of the body may differ from those referred to in this section.

Special powers are given to the Minister by section 99 (2), p. 237, *post*, where it appears to him that by reason of the default of any person there is no property constituted body of managers or governors of any county school or voluntary school. The Minister may also take such steps as he thinks desirable if he thinks that the local education authority has acted, or proposes to act, unreasonably (see section 68, p. 205, *post*).

(b) **"County secondary school".**—As to the meaning of this term see section 9 (2), p. 100, *ante*.

(c) **"Body of governors".**— See note (d) to section 17, p. 122, *ante*.

(d) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(e) **"May determine".**—Though, as in the case of a body of managers appointed under section 18 (2), p. 127, *ante*, the local education authority appears to have an absolute discretion as to the number and manner of appointment of a body of governors of a county secondary school, there must be an instrument of government and there must be a body of governors. The duty so imposed upon the local education authority may be regulated by the Minister under sections 68 and 99, pp. 205 and 237, *post*. It is questionable whether the local education authority may, if it so wishes, constitute its education committee or one of its education committees appointed under Part II of the First Schedule, p. 273, *post*, as the body of governors under this subsection. If an authority should purport so to act, and the Minister is of opinion that this would not be a *properly constituted body under the subsection*, he may take steps under section 99 (2), p. 237, *post*, to remedy the position.

It will be noted that in the case of county secondary schools in county areas the Act does not provide, as it does in the case of county primary schools, for the appointment of a proportion of the managers by the minor authority, through there is no reason why, in the exercise of its discretion, the local education authority should not so provide.

(f) **"Voluntary secondary school".**—As to the meaning of this term, see section 9 (2), p. 100, *ante*.

(g) **"Such number of persons".**—In the case of voluntary secondary schools the instrument of government is to be made by the Minister, but before making the order he is to consult with the local education authority. As to the proportion of foundation managers to managers appointed by the local education authority, similar provision is made as in the case of voluntary primary schools except that no provision is made for the appointment of governors by minor authorities in county areas, nor in fact, is any discretion left to the Minister, as in the case of county secondary schools. See, however, note (g) to section 20, p. 132, *post*.

(h) **"Controlled schools".**—See note (b) to section 15, p. 117, *ante*, and note (o) to section 18, p. 129, *ante*.

(i) **"Foundation governors".**—By section 114 (1), p. 255, *post*, the term means, in relation to any voluntary school, governors appointed otherwise than by the local education authority (or if, in the case of a county secondary school in a county area, the local education authority provides for the appointment of governors by the minor authority, otherwise than *by the minor authority*) *for the purpose of securing, so far as is practicable, that the character* of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto. Unless the context so requires, any references in the Act to "managers" will, in relation to any functions thereby conferred or imposed exclusively on foundation managers, be construed as references to such managers.

(j) **"Aided school".**—See note (c) to section 15, p. 118, *ante*.

(k) **"Special agreement school".**—See note (d) to section 15, p. 118, *ante*.

20. Grouping of schools under one management.—(1) A local education authority (a) may make an arrangement for the constitution of a single governing body (b) for any two or more county schools (c) or voluntary schools (d) maintained (e) by them, and any such arrangement may relate exclusively to primary schools, or exclusively to secondary schools or partly to primary schools and partly to secondary schools:

Provided that an authority shall not make any such arrangement with respect to a voluntary school except with the consent of the managers or governors (f) thereof. [256]

(2) The governing body constituted in pursuance of any such arrangement as aforesaid shall, if all the schools to which the arrangement relates are county schools, consist of such number of persons appointed in such manner as the local education authority may determine (g). [257]

(3) Where all or any of the schools to which any such arrangement relates are voluntary schools, the governing body constituted in pursuance of the arrangement shall consist of such number of persons appointed in such manner as may be determined by agreement (h) between the local education authority and the managers or governors of those schools, or, in default of such agreement, by the Minister. [258]

(4) The local education authority, in making any such arrangement as

aforesaid which relates to a primary school serving an area in which there is a minor authority (i), shall make provision for securing that the minor authority is adequately represented (k) upon the governing body constituted in pursuance of the arrangement. [259]

(5) Every arrangement made under this section may, if it does not relate to any voluntary school, be terminated (l) at any time by the local education authority by which it was made, and any such arrangement which relates to such a school may be terminated by agreement (m) between the local education authority and the governing body constituted in pursuance of the arrangement, or, in default of such agreement, by one year's notice (n) served by the local education authority on the said governing body or by one year's notice served by the said governing body on the local education authority. [260]

(6) While an arrangement under this section is in force with respect to any schools, the provisions of the last three foregoing sections as to the constitution of the body of managers or governors shall not apply (o) to the school, and for the purposes of any enactment (r) the governing body constituted in accordance with the arrangement shall be deemed to be the body of managers or governors of each of those schools, and references to a manager or governor in any enactment shall, in relation to every such school, be construed accordingly. [261]

NOTES

This section replaces and extends to include secondary schools within its scope section 33 of the Education Act, 1921; 7 Halsbury's Statutes 148, which enabled the local education authority to group under one body of managers any provided public elementary schools and also, with the consent of the managers concerned, any non-provided public elementary schools.

The present section goes further than did the previous one, in that hitherto it has not been permissible to group provided schools with non-provided schools whereas, under the present section any type of school, county or voluntary, primary or secondary, may be grouped with any other type, subject always, where a voluntary school is concerned, to the consent of the managers or governors.

Under the previous law an arrangement for grouping remained in force for three years, unless previously determined by consent. In future, however, such arrangements will remain in force indefinitely. Where a voluntary school is involved, the arrangement may be terminated at any time by agreement or, in default of agreement, by one year's notice from the local education authority to the governors, or *vice versa*.

As regards London, section 33 only applied to the grouping of non-provided schools. Special provision was made for the grouping of provided schools in London by section 36 of the Education Act, 1921; 7 Halsbury's Statutes 150. Now, however, this section applies equally to London as elsewhere, subject to the modifications introduced by section 117, p. 266, *post*.

Where a grouping arrangement is in force under this section, sections 17–19 inclusive, pp. 121 to 129, *ante*, so far as they relate to the constitution of the body of managers or governors, will not apply.

Under the section local education authorities will have a very wide discretion in connection with grouping arrangements since no limitation is involved except that a voluntary school cannot be grouped without the consent of the managers or governors. Grouping may be desirable or expedient for several reasons, *e.g.*, it may be difficult to find a sufficient number of suitable men and women to provide a separate body of managers or governors for a particular area or, where, for example, a number of secondary schools established under a single endowment scheme is brought within the ambit of the local education authority for the first time, the authority may be well advised to take advantage of the present existence of an able and experienced body of governors for those schools.

In spite of possessing a wide discretion in the matter a local education authority must not act unreasonably or the Minister may exercise his power under section 68, p. 205, *post*.

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Single governing body".**—The use of this term as applying to a group of schools which may all be primary schools, all secondary, or a combination of both, is not altogether happy in view of the fact that elsewhere in the Act great care has been taken to distinguish between the managers, instrument of management and rules of management of a primary school on the one hand and the governors, instrument of government and articles of government of a secondary school on the other, but it is difficult to suggest a better. Moreover, the section carefully avoids giving a name to the members of the single governing body. Presumably they will continue to be known as managers and governors respectively in the case of separate groups of primary and of secondary schools, but it is difficult to name the members of the governing body of a mixed group of primary and secondary schools. In such a case it would perhaps be as well to take a lead from this term and to give them at least the nominal status of "governors".

It should be noted that wherever grouping takes place under this section, sections 17–19 inclusive, pp. 121 to 129, *ante*, so far as they relate to the constitution of the body of governors or body of managers, cease to apply.

(c) **"County schools".**—See section 9 (2), p. 100, *ante*.

(d) **"Voluntary schools".**—See section 9 (2), p. 100, *ante*.

(e) **"Maintained".**—As to the meaning of the term "maintain", see section 114 (1) and (2), p. 255, *post*.

(f) **"Managers or governors"**.—See note (d) to section 17, p 122, *ante* As regards the interim period between 1st April, 1945, and the date when the school becomes a controlled school, an aided school or a special agreement school, as the case may be, see section 32, p 150, *post*

(g) **"May determine"**.—See note (h) to section 18, p 128, *ante*, and note (e) to section 19, p 130, *ante* The present section, however, does not specifically state that there shall be an instrument of management or of government and, since section 17 (1), p 121, *ante*, does not apply (sub section (5)), it must be presumed that this is not necessary

(h) **"As may be determined by agreement"**.—For the reason stated in the previous note, it appears that where the managers or governors of a voluntary school consent (under sub section (1)) to a grouping arrangement and agreement is reached under this sub section the jurisdiction of the Minister in relation to the making of the instrument of management or government is ousted even where the arrangement relates solely to voluntary schools Even if agreement is not reached under this sub section the Minister's jurisdiction is limited to determining the number of persons and the manner of their appointment and cannot affect, for example the number of schools to be included in the group though he retains his power of intervention under section 68 p 205 *post*

(i) **"Minor authority"**.—See note (c) to section 18, p 128, *ante* The subsection applies of course only to counties and not to county boroughs

(k) **"Adequately represented"**.—No indication is given of the meaning of this term, but it presumably means that, as far as possible, the proportionate representation of the minor authority upon bodies of managers of single schools under section 18 p 127, *ante* should be maintained For example, where all the schools in the group are county schools the representation of the minor authority should be one third of the total Where, however one or more or all the schools in the group are voluntary schools the position becomes more complicated, especially if there is more than one voluntary school, one being a controlled school and another an aided school or a special agreement school In such circumstances the securing of adequate representation for the minor authority may give rise to acute difficulty and the Minister's intervention may well be necessary Although this sub section refers only to primary schools, the arrangement proposed might provide for the grouping of a primary school with a secondary school and this appears to be the only case where a minor authority has a right to representation upon a governing body which controls a secondary school see note (e) to section 19, p 130, *ante* As to the enforcement of this duty by the Minister see section 99, p 237, *post*

(l) **"Be terminated"**.—Since section 17, p 121 *ante*, does not apply to an arrangement under this section, so far as the constitution of the governing body is concerned, section 111, p 254, *post*, as to the revocation or variation of orders and directions does not apply

(m) **"Terminated by agreement"**.—The agreement should specify a date for the termination of the arrangement and before the termination takes effect whether by agreement or not, care should be taken to ensure that the provisions of sections 17–19, pp 121 to 129, *ante* as to the constitution of separate bodies of managers or governors for each school concerned, are complied with

(n) **"One year's notice"**.—As to the service of notices, see section 113, p 254 *post* Such a notice may be given to expire at any time and if no date is specified in the notice it will take effect at the expiry of one year from the date of service

(o) **"Shall not apply"**.—It is only the provisions of sections 17–19, pp 121 to 129, *ante*, which relate to the constitution of the governing body which do not apply, and consequently section 17 (2), p 121, *ante*, which relates to rules of management and articles of government, *and so much of sub sections (4) and (5), ibid, as relates to those matters, continues* in force

(p) **"Any enactment"**.—This will include any relevant provision of this Act

21. Proceedings of managers and governors of county and voluntary schools.—(1) Any manager or governor (a) of a county school (b) or of a voluntary school (c), may resign his office and any such manager or governor appointed by a local education authority (d) or by a minor authority (e) shall be removable (f) by the authority by whom he was appointed **[262]**

(2) The provisions of the Fourth Schedule to this Act (g) shall have effect with respect to the meetings and proceedings of the managers or governors of any county school or voluntary school **[263]**

(3) The minutes of the proceedings of the managers or governors of any county school or voluntary school shall be open to inspection by the local education authority (h) **[264]**

NOTES

Subsection (2) re enacts (and extends to include secondary schools) section 30 (4) of the Education Act, 1921 7 Halsbury's Statutes 147, which referred to the Third Schedule of that Act, *ibid* 220 Subsections (1) and (3) (with a similar extension) re enacts pars (4) and (9) of the Third Schedule to that Act

(a) **"Manager or governor"**.—See note (d) to section 17, p 122, *ante*. As regards the interim period between 1st April, 1945, and the date when the school becomes a controlled school, an aided school or a special agreement school, as the case may be, see section 32, p 150, *post*

(b) **"County school"**.—See section 9 (2), p 100, *ante*

(c) **"Voluntary school"**.—See section 9 (2), p 100, *ante*

(d) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267 *post*

(e) **"Minor authority".**—This term is defined by section 114 (1), p. 255, *post*, but see also note (c) to section 18, p. 128, *ante*.

(f) **"Shall be removable".**—Normally the period of office of a manager or governor will be fixed by the instrument of management or government referred to in sections 17–19, pp. 121 to 129, *ante*, or in the case of a grouping arrangement will be determined under section 20 (2) or (3), p. 130, *ante*, but if not a manager or governor will presumably continue to hold office until he is removed or resigns.

(g) **"Fourth Schedule to this Act".**—See p. 285, *post*. The Fourth Schedule deals with:

(1) the quorum of the managers or governors;
(2) the effect on proceedings of a vacancy in the number of the managers or governors of any defect in their election, appointment or qualifications;
(3) the determination of questions and the chairman's casting vote;
(4) the frequency of meetings;
(5) the convening of meetings;
(6) the keeping of minutes.

(h) **"Inspection by the local education authority".**—Since the local education authority is a corporate body, either statutory, in the case of a county council, or chartered, in the case of a county borough council, inspection by the authority itself is physically impossible and the intervention of an agent is necessary. Although no specific reference is made, it is reasonable to assume that the managers or governors have the right, if they think it necessary to request the production of some proof of authority from any person purporting to act as agent of a local education authority.

22. Powers of local education authority as to use and care of premises of voluntary schools.—(1) The managers or governors (a) of a controlled school (b) shall be entitled to determine the use to which the school premises (e) or any part thereof shall be put on Saturdays, except when required to be used on Saturdays for the purposes of the school or for any purpose connected with education or with the welfare of the young for which the local education authority (d) desire to provide accommodation on the premises or on that part thereof, and the foundation managers or foundation governors shall be entitled to determine the use to which the school premises or any part thereof shall be put on Sundays, but save as aforesaid the local education authority may give such directions (e) as to the occupation and use of the school premises of a controlled school as they think fit. [265]

(2) If the local education authority desire to provide accommodation for any purpose connected with education or with the welfare of the young and are satisfied that there is no suitable alternative accommodation in their area for that purpose, they may direct the managers or governors of any aided school (f) or special agreement school (g) to provide free of charge (h) accommodation for that purpose on the school premises or any part thereof on any week-day when not required for the purposes of the school, so, however, that the managers or governors shall not be directed to provide such accommodation on more than three days in any week. [266]

(3) Subject to any directions given by a local education authority under the foregoing provisions of this section and to the requirements of any enactment other than this Act or the regulations made thereunder, the occupation and use of the school premises of any voluntary school (i) shall be under the control of the managers or governors thereof. [267]

(4) At any controlled school or special agreement school the persons employed for the purposes of the care and maintenance (j) of the school premises shall be appointed and dismissed by the local education authority, and the local education authority may give directions to the managers or governors of an aided school as to the number and conditions of service of persons employed at the school for such purposes. [268]

(5) In relation to any school with respect to which the trust deed (k) provides for any person other than the managers or governors of the school being entitled to control the occupation and use of the school premises, this section shall have effect as if for the references to the managers or governors there were substituted references to that person [269]

NOTES

The previous law applying to the use out of school hours of non-provided public elementary schools by the local education authority (Education Act, 1921, section 29 (2) (*e*), 7 Halsbury's Statutes 143), is substantially re-enacted in subsection (2) of this section, subject to the following modifications:

(1) The purposes for which the local education authority may require the use of the school are extended to include not only educational purposes but any purpose connected with the welfare of the young;

(2) Under the previous law the power was limited to the use of "any room in the schoolhouse"; now the authority may require the use of any part of the school premises which, as defined in section 114 (1), p. 255, *post*, includes even detached playing fields; on the other hand "schoolhouse" included the teacher's dwelling-house, if there was one, but "school premises" does not;

(4) The authority may not require the free use of the school premises on Sundays;

(5) Before requiring the premises the authority must be satisfied that there is no suitable alternative accommodation in its area for the purpose, not merely in schools provided by the authority; and

(6) Special provisions apply to controlled schools, which must be occupied and used in accordance with the authority's directions (if any) except on Saturdays and Sundays; on Sundays the foundation managers or foundation governors are entitled to determine the use to which the premises shall be put, and on Saturdays the managers or governors may do the same except when required for the purposes of the school or by the authority for any purpose connected with education or the welfare of the young (subsection (1)).

Previous statutes have made no direct reference to the question of caretaking in non-provided schools, but it was held in *Gillow* v. *Durham County Council* [1911] 1 K.B. 222; [1913] A.C. 54; 19 Digest 560, *32*, that the managers were entitled to cause the schools to be cleaned that the local education authority was not entitled to interfere with the managers in the performance of their duties, and that the managers were entitled to have their reasonable expenses of cleaning, caring for, and attending to the schools paid by the authority as part of the maintenance of the schools. The position as set out in this case is considerably modified by subsection (4) of this section. As regards controlled schools and special agreement schools the subsection provides that the caretakers, cleaners, etc., shall be appointed by the local education authority, and in the case of aided schools the authority may give directions to the managers regarding the number and conditions of service of persons appointed by the managers for the purpose.

(a) "**Managers or governors**".—See subsection (5) of this section and note (d) to section 17, p. 122, *ante*. As regards the interim period between 1st April, 1945, and the date when the school becomes a controlled school, an aided school or a special agreement school, as the case may be, see section 32, p. 150, *post*. The terms "foundation managers" and "foundation governors", used later in the subsection, are defined in section 114 (1), p. 255, *post*.

(b) "**Controlled school**".—See section 15, p. 113, *ante*.

(c) "**School premises**".—Section 114 (1), p. 255, *post*, defines "premises", in relation to any school, as including any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house.

(d) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(e) "**Directions**".—As to the revocation or variation of such directions, see section 111, p. 254, *post*, and as to the enforcement thereof, see sections 68 and 99, pp. 205 and 237, *post*.

(f) "**Aided school**".—See section 15, p. 113, *ante*.

(g) "**Special agreement school**".—See section 16, p. 119, *ante*.

(h) "**Free of charge**".—The right of the authority in this connection is limited to the provision, free of charge, of accommodation. Nothing in the section requires the managers or governors to provide lighting, heating, etc.

(i) "**Voluntary school**".—See sections 9 (2) and 15, pp. 100 and 113, *ante*.

(k) "**Trust deed**".—By section 114 (1), p. 255, *post*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof.

Secular Instruction and Appointment and Dismissal of Teachers in County and Voluntary Schools

23. Secular instruction in county schools and in voluntary schools.—(1) In every county school (a) and, subject to the provisions hereinafter contained as to religious education (b), in every voluntary school (c) except an aided secondary school (d), the secular instruction (e) to be given to the pupils (f) shall, save in so far as may be otherwise provided by the rules of management (g) or articles of government (h) for the school (i), be under the control of the local education authority (k). [270]

(2) Subject to the provisions hereinafter contained as to religious education, the secular instruction to be given to the pupils in every aided secondary school shall, save in so far as may be otherwise provided by the articles of government for the school, be under the control of the governors (l) of the school. [271]

(3) Save in so far as may be otherwise provided by the rules of management or articles of government for the school, the power to control the secular instruction (m) provided in any county school or voluntary school shall include power to determine the times at which the school session shall begin and end on any day, to determine the times at which the school terms

(n) shall begin and end, to determine the school holidays, and to require that pupils in attendance at the school shall attend any class not conducted on the school premises for the purpose of receiving instruction or training included in the secular curriculum of the school. [272]

NOTES

Subject to the provisions of the rules of management or articles of government which may apply in any particular case, this section specifies the *relationship between the managers* or governors of county and voluntary schools, primary and secondary, and the local education authority in relation to the control of secular instruction, and also indicates the extent of the power of either body to control such instruction. It replaces parts of section 28, 29 and 35 of the Education Act, 1921, 7 Halsbury's Statutes 143, 149, as regards schools which were either provided or non-provided public elementary schools, and brings secondary schools into the general scheme, though special provision is made in the case of aided secondary schools.

Under the previous law, section 28, *supra*, provided (*inter alia*) that every elementary school provided by a local education authority should be conducted under the control and management of that authority. Under section 30, *ibid.*, the appointment of a body of managers was compulsory for every such school where the local education authority was the council of a county, and discretionary where it was the council of a borough or urban district. By section 35 (1), *ibid.*, the local education authority was empowered to determine the matters relating to the management of the school with which the managers should deal, and the conditions and restrictions to which they were to be subject.

As regards non-provided schools, section 29 (1) of the 1921 Act; 7 Halsbury's Statutes 143, provided that the local education authority should be responsible for and have the control of all secular instruction in such schools, and the requirement to maintain and keep efficient a non-provided school continued only so long as (*inter alia*) the managers carried out any directions of the local education authority as to the secular instruction to be given in the school (*ibid.*, section 29 (2)). By *ibid.* section 29 (6); 7 Halsbury's Statutes 145, the managers of a non-provided school were given all the powers of management required for carrying out the Act.

The differences between the old and the new law relating to the control of secular instruction will appear from a perusal of this section and the following notes.

The guiding principle of section 76, p. 213, *post*, that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents has especial importance in relation to this section.

(a) **"County school".**—See section 9 (2), p. 100, *ante*, which provides that county schools are primary and secondary schools maintained by a local education authority (not being nursery schools or special schools) and established by a local education authority or by a former authority.

(b) **"Religious education".**—The provisions of the Act relating to religious education are contained in sections 25–30 inclusive, pp. 139 to 147, *post*.

(c) **"Voluntary school".**—Section 9 (2), p. 100, *ante*, provides that voluntary schools are primary and secondary schools maintained by a local education authority (not being nursery schools or special schools) but established otherwise than by a local education authority or a former authority. As to the classification of voluntary schools, see section 15, p. 113, *ante*.

(d) **"Aided secondary school".**—This means a secondary school, i.e., a school for providing secondary education (as to which see section 8 (1), p. 97, *ante*), which is also an aided school (see section 15, p. 113, *ante*).

(e) **"Secular instruction".**—Under the previous law it has been held that the control of secular education might interfere with the managers' control of religious instruction—see, for instance, *Blencowe* v. *Northamptonshire County Council* [1907] 1 Ch. 504; 19 Digest 560, 35. Now, however, see section 25 (6), p. 140, *post*. Generally the term would cover such matters as the time-table of the school session, the curriculum and the school books to be used; but see subsection (3), which provides that the power to control secular instruction shall include the additional matters there mentioned. As regards secondary schools, special consideration should be given to the Report of the Norwood Committee, published in June, 1943, entitled "Curriculum and Examinations in Secondary Schools".

(f) **"Pupils".**—By section 114 (1), p. 255, *post*, the term "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(g) **"Rules of management".**—Under section 17 (3) (*a*), p. 121, *ante*, every county primary school and every voluntary primary school is to be conducted in accordance with rules of management made by an order of the local education authority—see particularly note (*q*) to that section.

(h) **"Articles of government".**—Under section 17 (3) (*b*), p. 121, *ante*, every county secondary school and every voluntary secondary school is to be conducted in accordance with articles of government made, in the case of a county school, by an order of the local education authority and approved by the Minister, and in the case of a voluntary school by an order of the Minister. In particular the articles are to determine the functions to be exercised in relation to the school by the local education authority, the body of governors, and the head teacher respectively. See especially note (r) to section 17, p. 123, *ante*.

(i) **"School".**—This word is defined by section 114 (1), p. 255, *post*, and, in relation to this section, means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority.

(k) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(l) **"Governors".**—See sections 17 and 19, pp. 121 and 129, *ante*. As to the interim period between 1st April, 1945, and the date when a voluntary school becomes a controlled school, an aided school or a special agreement school, see section 32, p. 150, *post*.

(m) **"The power to control the secular instruction".**—This sub section replaces and extends section 29 (8) of the Education Act, 1921; 7 Halsbury's Statutes 145, which gave statutory form in general terms to the decision in *Bunt* v. *Kent* [1914] 1 K.B. 207; 19 Digest

567, *84*, that a child who ordinarily attended at one elementary school could properly be required by the local education authority to attend a cooking class held at another school The words of the subsection merely state that the power of control shall include the matters mentioned They do not exclude other matters—see note (e), *ante*

(n) **"School terms".**—*This phrase is not defined in the Act and in effect the definition* of "school term" as "the term as fixed by the local education authority" has been more properly included in an operative rather than an interpretative part of the Act

Presumably attendance at a county or voluntary school in accordance with the school sessions and terms fixed under this section will constitute full time attendance as mentioned in section 36, p 157, *post*, though there is no definition of 'full time" in the Act and it may, in the case for example, of independent schools be difficult to determine whether a pupil is receiving full time education

24. Appointment and dismissal of teachers in county schools and in voluntary schools.—(1) In every county school (a) and, subject to the provisions hereinafter contained as to religious education (b), in every controlled school (c) and special agreement school (d), the appointment (e) of teachers (f) shall, save in so far as may be otherwise provided by the rules of management (g) or articles of government (h) for the school, be under the control (i) of the local education authority (k), and no teacher shall be dismissed (l) except by the authority [273]

(2) In every aided school (m) the respective functions of the local education authority and of the managers or governors (n) of the school with respect to the appointment of teachers and, subject to the provisions hereinafter contained as to religious education, with respect to the dismissal of teachers, shall be regulated by the rules of management or articles of government for the school

Provided that the rules of management or articles of government for every aided school—

(*a*) shall make provision for the appointment (o) of the teachers by the managers or governors (p) of the school, for enabling the local education authority to determine the number of teachers to be employed (q), and for enabling the authority, except for reasons for which the managers or governors are expressly empowered by this Act to dismiss teachers (r) without such consent, to prohibit the dismissal of teachers without the consent of the authority (s) and to require the dismissal of any teacher (t) and

(*b*) may make such provision as may be agreed between the local education authority and the managers or governors of the school, or in default of such agreement as may be determined by the Minister (u), for enabling the authority to prohibit the appointment without the consent of the authority, of teachers to be employed for giving secular instruction (v), and for enabling the authority to give directions (w) as to the educational qualifications (x) of the teachers to be so employed [274]

(3) No woman shall be disqualified for employment as a teacher in any county school or voluntary school (y) or be dismissed from such employment by reason only of marriage (z) [275]

NOTES

Though the main provisions of the Act relating to the appointment and dismissal of teachers in county schools and voluntary schools are contained in this section, certain matters, largely related to the appointment and dismissal of teachers on religious grounds, are contained in sections 27, 28 and 29, pp 143, 144 and 146, *post*

Section 62, p 198, *post*, sets out the respective duties of the Minister and of local education authorities in relation to the training of teachers, while section 89, p 225, *post*, deals with their *remuneration and scales of salary* As regards teachers in independent schools, see sections 71–74, pp 208 to 212 *post*

Under previous legislation the general power to appoint teachers was contained in section 148 of the Education Act, 1921, 26 Halsbury's Statutes 370, which enabled a local education authority to appoint 'necessary officers, including teachers"—see note (q) to section 6, p 92, *ante*—to hold office during the pleasure of the authority, though section 121 of the Local Government Act, 1933, 7 Halsbury's Statutes 204, provided that the last phrase did not preclude a provision that the appointment should not be terminated without reasonable notice Section 148, *supra*, applied to the appointment and dismissal of teachers in *provided schools and also* in secondary and other schools established by the authority

As regards non provided public elementary schools, section 29 of the Education Act, 1921, 7 Halsbury's Statutes 143, provided that the managers of such schools should, subject to the consent of the local education authority, have the exclusive power of appointing and dismissing

teachers (*ibid*, sub section (6), 7 Halsbury's Statutes 145, subject to the following powers of the local education authority —

(1) to give directions as to the number and educational qualifications of such teachers (sub-section (2) (*a*), *ibid*),

(2) to dismiss a teacher on educational grounds (sub section (2) (*a*), *ibid*), and

(3) to appoint teachers of secular subjects not attached to the staff of any particular public elementary school and teachers for the purpose of giving practical instruction, pupil teachers and student teachers (sub section (5) (*b*)), 7 Halsbury's Statutes 145,

and with the restriction that consent to the appointment of a teacher should not be withheld except on educational grounds, and the exception that consent was not required to the dismissal of a teacher on grounds connected with the giving of religious instruction in the school

In the case of schools in respect of which a grant was made under section 8 of the Education Act, 1936, section 10 of that Act, 29 Halsbury's Statutes 125, provided that the teachers should be in the employment and under the control of the local education authority (except as regards teachers specially appointed to give religious instruction under the terms of the trust deed in accordance with section 29 (5) (*c*) of the Education Act, 1921, 7 Halsbury's Statutes 145 ("reserved teachers") and that the local education authority should have the exclusive power of appointing and dismissing teachers, except that the approval (on religious grounds only) of the managers was necessary to the appointment of reserved teachers, whilst the managers might request the removal of a reserved teacher on religious grounds Disputes between the managers and the authority were to be determined in accordance with the Second Schedule to the 1936 Act, 29 *Halsbury's Statutes 129*

Under the present Act the position (which applies equally to primary and secondary schools) is as follows —

(1) *Generally* For the first time it is provided that no woman is to be disqualified for appointment as a teacher in any county school or voluntary school or dismissed by reason only of marriage (sub section (3) of this section),

(2) *County Schools* The appointment of teachers is to be under the control of the local education authority, except as may be otherwise provided by the rules of management or *articles of government Suggestions with regard to the content in this connection of the* articles of government of maintained secondary schools are contained in the White Paper on the Principles of Government in Maintained Secondary Schools (Cmd 6523 of 1944) (see note (r) to section 17, p 123, *ante*) No teacher is to be dismissed except by the authority (sub section (1) of this section),

(3) *Voluntary Schools*

(*a*) *Aided Schools* The respective functions of the local education authority and the managers or governors as to the appointment and dismissal of teachers are to be regulated by the rules of management or articles of government subject to the following reservations (sub-section (2) of this section) —

(i) The functions of the authority and managers or governors respectively relating to *the dismissal of teachers are subject to the provisions of the Act as to religious* education, *infra* (*ibid*),

(ii) The rules of management or articles of government must provide for the appointment of teachers by the managers or governors, must enable the local education authority to determine the number of teachers to be employed at the school, and must enable the authority, except for reasons for which the managers or governors are expressly empowered by the Act to dismiss teachers without such consent, to prohibit the dismissal of teachers without its consent and to require the dismissal of any teacher (*ibid*),

(iii) The rules of management or articles of government may enable the authority (if agreed between the authority and the managers or governors or, in default of agreement, determined by the Minister) to prohibit the appointment, without consent, of teachers to be employed for giving secular instruction, and to give directions as to the educational qualifications of the teachers to be so employed (*ibid*),

(iv) The consent of the local education authority is not required to the dismissal by the managers or governors of a teacher appointed to give religious instruction other than instruction in accordance with an agreed syllabus for failure to give that instruction efficiently and suitably (section 28 (2), p 144, *post*)

(*b*) *Controlled Schools* Subject to the provisions referred to below as to religious education, and except as may be otherwise provided by the rules of management or articles of government, the appointment of teachers is to be under the control of the local education authority Suggestions with regard to the content in this connection of articles of government are contained in the White Paper on the Principles of Government in Maintained Secondary Schools (Cmd 6523 of 1944) (see note (r) to section 17 p 123, *ante*) No teacher is to be dismissed except by the authority (sub-section (1) of this section)

Where the staff at a school exceeds two it must include persons (referred to as "reserved teachers") selected for their fitness and competence to give such religious instruction in accordance with the trust deed or the practice observed before the school became a controlled school (section 27 (2), p 144, *post*) The local education authority must consult the foundation managers or foundation governors before appointing a reserved teacher *and may not make the appointment unless the managers or governors are satisfied* as to his fitness and competence to give such religious instruction (section 27 (4), *ibid*)

The foundation managers or foundation governors may require the authority to dismiss a reserved teacher from employment as a reserved teacher in the school if they are of opinion that he has failed to give such religious instruction efficiently and suitably (section 27 (5), *ibid*)

The head teacher of a controlled school is not to be a reserved teacher, but before appointing a head teacher the authority must consult the managers or governors with regard to the person proposed to be appointed (section 27 (3), *ibid*)

(*c*) *Special Agreement Schools* Except as regards the provisions relating to religious education, the appointment and dismissal of teachers in special agreement schools is the same as in controlled schools (see the first paragraph of the note on *Controlled Schools*, *supra*) (sub-section (1) of this section)

Where the special agreement provides for the employment of reserved teachers, similar provisions apply in respect of the appointment and dismissal of such reserved teachers as apply to reserved teachers in controlled schools (section 28 (3) and (4), p. 144, *post*).

(4) *Saving provision*: Subject to the following exceptions, no person is to be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in any county school or voluntary school, or from being otherwise employed for the purposes of the school, nor required to give religious instruction or receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious instruction (section 30, p. 147, *post*). These provisions, however, do not apply to teachers in aided schools, or to reserved teachers in controlled schools or special agreement schools, except that such teachers are not to receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious instruction, of his religious opinions, or of his attending religious worship (proviso to section 30, *supra*)

It will be seen from the foregoing summary that the main changes in the law, apart from the general control now to be exercised over voluntary secondary schools, relates to the transfer of responsibility from the managers or governors to the local education authority in the case of controlled schools.

(a) **"County school".**—See section 9 (2), p 100, *ante*

(b) **"Religious education".**—The provisions of the Act relating to religious education are contained in sections 25–30 inclusive, pp. 139 to 147, *post*. See also the general note, *supra*.

(c) **"Controlled school".**—See section 15, p. 113, *ante*.

(d) **"Special agreement school".**—See section 14, p. 112, *ante*.

(e) **"Appointment".**—See the case of *Powell* v. *Lee* (1908), 72 J.P. 353; 34 Digest 45, *210*, with respect to the method of communication of an appointment to a teacher and the result of failure to communicate it in the proper manner.

(f) **"Teachers".**—There is no definition of the term in this Act, nor was there in the Education Act, 1921; 7 Halsbury's Statutes 120. The term was, however, defined in the Education Act, 1870, but its continuance was, in 1921, deemed to be useless. As to whether a teacher is an officer of a local education authority under this Act, see note (r) to section 6, p. 92, *ante*.

(g) **"Rules of management".**—Under section 17 (3) (*a*), p. 121, *ante*, every county primary school and every voluntary primary school is to be conducted in accordance with rules of management made by an order of the local education authority—see particularly note (q) to that section.

(h) **"Articles of government".**—Under section 17 (3) (*b*), p. 121, *post*, every county secondary school and every voluntary secondary school is to be conducted in accordance with articles of government made, in the case of a county school, by an order of the local education authority and approved by the Minister, and in the case of a voluntary school by an order of the Minister In particular the articles are to determine the functions to be exercised in relation to the school by the local education authority, the body of governors, and the head teacher respectively—see in particular note (r) to section 17, p. 123, *ante*.

(i) **"Under the control"**—This phrase must be taken to mean that, subject to the rules of management or articles of government and to the special provisions regarding religious education, it is for the local education authority to determine whether appointments shall be made by the authority, by the managers or governors, by both in consultation, by the managers or governors with consent or by some other method. If the authority authorises the governors to make appointments it would appear that the governors will act either as agents or as a body to which power to appoint has been delegated, according to the circumstances. Reference is made in note (*l*), *infra*, to the cases of *Young* v. *Cuthbert* [1906] 1 Ch. 451; 19 Digest 555, *13*, and *Crocker* v. *Plymouth Corporation* [1906] 1 K.B. 454; 19 Digest 602, *289*. It would seem that in such circumstances as have been mentioned those cases will no longer apply and that there will be privity of contract between the teacher and the local education authority, even where the appointment is made by the managers or governors. It is doubtful, however, whether these remarks will apply to the appointment of teachers in aided schools, in view of the first words in proviso (*a*) to sub-section (2) of this section.

(k) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(l) **"Dismissed".**—In cases where under this Act there is a transfer of responsibility for dismissal to the local education authority a case similar to that arising in *Jones* v. *Hughes* [1905] 1 Ch. 180; 19 Digest 605, *303*, might arise. There the managers gave notice to the plaintiff before the Education Act, 1902, came into operation which did not expire until afterwards. the notice was held to be good and not to require the consent of the authority.

It was held in *Young* v. *Cuthbert* [1906] 1 Ch. 451; 19 Digest 555, *13*, that the requirements of section 7 of the Education Act, 1902, as to the consent of the authority to dismissal by the managers were only operative as between the managers and the local education authority and gave no right to the teacher, and in *Crocker* v. *Plymouth Corporation* [1906] 1 K.B. 494; 19 Digest 602, *289*, that that section did not make a personal contract between the local education authority and the teacher so that the teacher could sue the authority for salary, even though it was paid direct. It would appear that these cases are superseded so far as they relate to the dismissal of teachers in that there must be such a degree of privity of contract between the authority and the teacher and the authority as is necessary to enable the dismissal to be made by the authority.

(m) **"Aided school".**—See section 15, p. 113, *ante*.

(n) **"Managers or governors".**—See note (d) to section 17, p. 122, *ante*. As regards the interim period between 1st April, 1945, and the date on which the school becomes a controlled school, an aided school or a special agreement school as the case may be, section 32, p. 150, *post*, provides that every voluntary school is to be deemed an aided school, subject to the modifications made by that section.

(o) **"Appointment".**—As to the manner of making an appointment, in the case of managers or governors, see *Meyers* v. *Hennell*, [1912] 2 Ch. 256; 19 Digest 561, *39*.

(p) **"Appointment of the teachers by the managers or governors".**—See note (i) *supra*.

(q) **"The number of teachers to be employed".**—*This re-enacts and extends to all* voluntary schools part of section 29 (2) (*a*) of the Education Act, 1921.

(r) **"Expressly empowered by this Act to dismiss teachers".**—The managers or governors of an aided school may, without consent, dismiss a teacher appointed to give religious instruction other than in accordance with an agreed syllabus on the ground that he has failed to give such instruction efficiently and suitably (section 28 (2), p. 144, *post*).

(s) **"Without the consent of the authority".**—See the cases referred to in note (e), *supra*. In *Smith* v. *Macnally* [1912] 1 Ch. 816; 19 Digest *305*, 305, a teacher was dismissed by the managers, who alleged dissatisfaction with the religious instruction given by her, though in fact the ground was that she had ceased to be a member of the Church of England and had become a Wesleyan. *It was held that the true ground of dismissal was not connected with the giving of* religious instruction in the school and that the consent of the authority was, therefore, necessary; and, furthermore, that she had a statutory right under the Act until the requirements of the Act (then the Act of 1902) had been complied with.

(t) **"To require the dismissal of any teacher".**—It would appear that the authority will have power to require the dismissal of a teacher under this provision on any ground other than that mentioned in section 28 (2), p. 144, *post*, and that it will not be limited, as it was in section 29 (2) (*a*) of the Education Act, 1921; 7 Halsbury's Statutes 143, to dismissal "on education grounds". In consequence the cases on the meaning of these words in previous legislation, e.g., *Martin* v. *Eccles Corporation* [1919] 1 Ch. 287; 19 Digest 603, *296*; *Hanson* v. *Radcliffe U.D.C.* (1922), 38 L T R 667; 19 Digest 603, *297*; and *Dyson* v. *Sheffield Corporation*; *Sadler* v. *Sheffield Corporation* [1924] 1 Ch. 483; 19 Digest 603, *299*, will be superseded.

(u) **"As may be determined by the Minister".**—In the case of an aided primary school it will be necessary for one of the parties, in the event of failure to agree, to seek the aid of the Minister, since the rules of management are to be made by order of the local education authority. *In the case of an aided secondary school the articles of government are to be made* by order of the Minister, who will presumably approach the authority and the governors and endeavour to secure agreement on the contents of the articles in relation to the matters specified before imposing his will upon them. In addition to this reference to the Minister, section 67 (1), p. 203, *post*, makes provision for the settlement by the Minister of disputes between the local education authority and the managers or governors of a school.

(v) **"Secular instruction".**—As to the meaning of this term, see note(c) to section 23, p. 135, *ante*.

(w) **"Directions".**—As to the revocation or variation of directions given by a local education authority, see section 111, p. 254, *post*.

(x) **"Educational qualifications".**—The power of the local education authority to control the educational qualifications of teachers in an aided school will not necessarily be so strong as it was under section 29 (2) (*a*) of the Education Act, 1921, where the managers were required to carry out *any* directions of the authority with respect to the educational qualifications of the teachers to be employed at the school.

(y) **"Voluntary school".**—See sections 9 (2) and 15, pp. 100 and 113, *ante*. The term covers aided, controlled and special agreement schools.

(z) **"By reason only of marriage".**—The statutory removal of the marriage bar by this sub-section is new. The previous law, as to the dismissal of married women teachers employed in provided schools, was based on the decisions in *Price* v. *Rhondda U.D.C.* [1923] 2 Ch. 372; 19 Digest 605, *302*; *Fennell* v. *East Ham Corporation* [1926] Ch. 641; Digest Supp., and *Short* v. *Poole Corporation* [1926] Ch. 66; Digest Supp. in each of which the authority's action in dismissing a teacher on grounds of marriage alone was held to be *intra vires* and valid. Different considerations applied in the case of non-provided schools, for it would appear that the appointment of unmarried women would not come within the scope of "educational qualifications" nor would the dismissal of married women come within "educational grounds". But for this subsection, however, it would appear that the powers of the authority to dismiss married teachers would have been extended to voluntary schools since proviso (*a*) to subsection (2) would have enabled the authority to require, in the case of an aided school, the dismissal of *any* teacher and, in the case of controlled and special agreement schools, subsection (1) provides that dismissals are to be made by the authority.

Religious Education in County and Voluntary Schools

25. General provisions as to religious education in county and in voluntary schools.—(1) Subject to the provisions of this section, the school day (a) in every county school (b) and in every voluntary school (c) shall begin (d) with collective worship (e), on the part of all pupils (f) in attendance at the school (g), and the arrangements made therefor shall provide for a single act of worship attended by all such pupils unless, in the opinion of (h) the local education authority (i) or, in the case of a voluntary school, of the managers or governors (k) thereof, the school premises (l) are such as to make it impracticable to assemble them for that purpose. **[276]**

(2) Subject to the provisions of this section, religious instruction (m) shall be given in every county school and in every voluntary school. **[277]**

(3) It shall not be required (n), as a condition of any pupil attending any county school or any voluntary school, that he shall attend or abstain from attending any Sunday school or any place of religious worship. **[278]**

(4) *If the parent (o) of any pupil in attendance at any county school or* any voluntary school requests (p) that he be wholly or partly excused from attendance at religious worship in the school, or from attendance at religious

instruction in the school, or from attendance at both religious worship and religious instruction in the school, then, until the request is withdrawn, the pupil shall be excused (q) from such attendance accordingly. [279]

(5) Where any pupil has been wholly or partly excused from attendance at religious worship or instruction in any school in accordance with the provisions of this section, and the local education authority are satisfied :—

(*a*) that the parent of the pupil desires him to receive religious instruction of a kind which is not provided in the school during the periods during which he is excused from such attendance ;

(*b*) that the pupil cannot with reasonable convenience be sent to another county or voluntary school where religious instruction of the kind desired by the parent is provided ; and

(*c*) that arrangements have been made for him to receive religious instruction during school hours elsewhere,

the pupil may be withdrawn from the school (r) during such periods as are reasonably necessary for the purpose of enabling him to receive religious instruction in accordance with the arrangements :

Provided that the pupil shall not be so withdrawn unless the local education authority are satisfied that the arrangements are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session on that day. [280]

(6) No directions (s) shall be given by the local education authority as to the secular instruction (t) to be given to pupils in attendance at a voluntary school so as to interfere with the provision of reasonable facilities for religious instruction in the school during school hours ; and no such direction shall be given so as to prevent a pupil from receiving religious instruction in accordance with the provisions of this section during the hours normally set apart (u) for that purpose, unless arrangements are made whereby the pupil shall receive such instruction in the school at some other time. [281]

(7) Where the parent of any pupil who is a boarder at a county school or at a voluntary school requests that the pupil be permitted to attend worship in accordance with the tenets of a particular religious denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs, or to receive religious instruction in accordance with such tenets outside school hours (v), the managers or governors of the school shall make arrangements for affording to the pupil reasonable opportunities for so doing and such arrangements may provide for affording facilities for such worship or instruction on the school premises, so however, that such arrangements shall not entail expenditure by the local education authority. [282]

NOTES

This and the four following sections deal with the provision of religious education in both county and voluntary schools. The following note outlines the various provisions contained in these sections.

The White Paper on Educational Reconstruction (Cmd 6458 of 1943) stated (at p. 11) :—

" There has been a very general wish, not confined to representatives of the churches, that religious education should be given a more defined place in the life and work of the schools, springing from the desire to revive the spiritual and personal values in our society and in our national tradition. The church, the family, the local community and the teacher—all have their part to play in imparting religious instruction to the young ".

In order to emphasise the importance of the subject provision has been made, in subsection (1) of this section, for the school day in all primary and secondary schools to begin with collective worship, except where this is impracticable owing to the nature of the school premises. Statutory provision is also made, in subsection (2), *ibid.*, for the giving of religious instruction in all primary and secondary schools. This instruction may be given at any time, and the provision in section 27 (1) (*b*) of the Education Act, 1921 ; 7 Halsbury's Statutes 142, restricting religious observance and instruction in religious subjects to the beginning and/or the end of the school session ceases to apply. The provision of an act of worship and of religious instruction has been the practice in the past in the great majority of schools and this practice has now received statutory sanction and is to be universal.

The obligation in subsections (1) and (2) to provide for collective worship and for the giving of religious instruction does not mean that all children will be required to participate in the corporate act of worship or in religious instruction. The provisions of section 27 (1) (*a*) of the Education Act, 1921 ; 7 Halsbury's Statutes 142 (which was re-enacted from section 7 of the Elementary Education Act, 1870, and was commonly known as the " Conscience Clause "), are

continued in subsections (3) and (4) of this section. As stated in the White Paper (Cmd. 6458 of 1943, at p. 11):—

"In this respect the old-established rights of conscience will remain inviolate and it will be open to the parent to withdraw his child from all or any form of religious worship or instruction".

The religious instruction to be given in county schools is to be in accordance with an agreed syllabus (section 26, p. 142, *post*), to be drawn up by representatives of the Established Church (except in Wales and Monmouthshire) and other religious denominations, the teachers and the local education authority, under the procedure described in the Fifth Schedule, p. 286, *post*. Neither the corporate act of worship nor the religious instruction required to be given may include any catechism or formulary distinctive of any particular religious denomination (section 26, *supra*). See also, with regard to the adoption of an agreed syllabus, section 29, p. 146, *post*, which also enables the local education authority to set up a standing advisory council on religious education.

As regard withdrawal, parents may not only withdraw their children entirely from religious observance and instruction (sub-section (4) of this section) but, if they wish their children to receive some form of denominational instruction and it is not reasonably convenient to send them to another school where religious instruction of the kind desired by the parents is provided, may withdraw them for that purpose also (sub-section (5), *ibid.*). In the case of some county secondary schools, situated in the open country in order to serve the needs of a number of villages, there may be no building reasonably accessible to which the children can be withdrawn for denominational instruction. In such cases the local education authority is required by the proviso to section 26, p. 142, *post*, unless there are special circumstances which would make it unreasonable to do so, to provide facilities for the denominational instruction to be given on the school premises. It will be for the denomination concerned to provide the teacher and to meet the cost of the instruction.

In controlled schools the religious instruction is to be in accordance with an agreed syllabus (section 27 (6), p. 143, *post*), but the parents of any pupils attending the school may request that their children shall receive religious instruction of the denomination observed by the school before it became a controlled school and, unless owing to special circumstances it would be unreasonable to do so, the foundation managers or foundation governors must make arrangements for such denominational instruction to be given at the school to the pupils concerned for not more than two periods a week (section 27 (1), *ibid.*). Without prejudice to this duty, but for the purpose of facilitating its execution, where the number of teaching staff exceeds two the teaching staff is to include persons (referred to as "reserved teachers") selected for their fitness and competence to give such religious instruction and the reserved teachers are to be specifically appointed to do so (section 27 (2), *ibid.*)—see also the general note to section 24, p. 136, *ante*. Where the staff does not exceed two and reserved teachers may not be appointed the religious instruction may be given by persons who are acceptable to the foundation managers, e.g., local clergy or lay workers. Furthermore, there is no reason why members of the ordinary teaching staff should not give the instruction, if they volunteer to do so (Explanatory Memorandum to the Bill, Cmd. 6492 of 1943, p. 7). They may not, however, be required to do so (section 30, p. 147, *post*).

In aided schools and special agreement schools the religious instruction is to be in accordance with the provisions of the trust deed or, if there is no trust deed, with the practice in operation before the school became a voluntary school (section 28 (1), p. 144, *post*). Anxiety was felt during the passage of the Bill regarding children in single school areas who might be compelled by force of circumstances to attend a school at which denominational instruction was given of a kind which certain parents might not desire their children to receive. By the proviso to section 28 (1), *ibid.*, if parents of children attending an aided or special agreement school wish them to receive religious instruction in accordance with an agreed syllabus, and the children cannot reasonably attend a school where that instruction is ordinarily given, provision at the school must be made accordingly, unless owing to special circumstances the local education authority is satisfied that it would be unreasonable to do so. The arrangements are to be made by the managers or governors, but if they are unwilling to do so the local education authority is required to make the arrangements in their place.

Provision is also made (by subsection (7) of this section) to enable pupils at boarding schools to attend religious worship and to receive religious instruction in accordance with the wishes of the parents. It should here be noted that section 76, p. 213, *post*, lays down a guiding principle which pervades the whole Act, that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

(a) **"School day".**—As to the power to determine the times on which the school day shall begin and end, see section 23 (3), p. 134, *ante*.

(b) **"County school".**—See section 9 (2), p. 100, *ante*.

(c) **"Voluntary school".**—See section 9 (2), p. 100, *ante*, and as to the classification of voluntary schools as controlled, aided or special agreement schools, see section 15, p. 113, *ante*.

(d) **"Shall begin".**—As to the enforcement of this requirement see section 99, p. 237, *post*.

(e) **"Collective worship".**—The requirement to provide an act of collective worship at the beginning of each school day is new as a statutory obligation, though the great majority of schools have provided such an opportunity in the past. All pupils attending the school are required to attend, unless—

(*a*) the school premises are such as to make it impracticable to assemble them for the purpose (sub-section (1));

(*b*) the parent of any pupils requests that he be wholly or partly excused from attendance at religious worship in the school (sub-section (2)).

The section does not specify that the request must be in writing, but it is desirable, for obvious reasons, that a written request should be obtained wherever possible. If a request has not been received but the pupil refuses or fails to attend, enquiry should be made without delay as to the parent's wishes. As to the collective act of worship in county schools, see section 26, p. 142, *post*.

(f) **"Pupils".**—By section 114 (1), p. 255, *post*, this term, where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(g) **"School".**—This term is defined in section 114 (1), p. 255, *post*.

(h) **"Unless in the opinion of".**—It will be noticed that the sub-section imposes a

positive duty upon the local education authority, or the managers or governors, as the case may be *unless in their opinion* it is impracticable. Section 68, p 205, *post*, enables the Minister to take steps to prevent the unreasonable exercise by a local education authority, or by the managers or governors of any county of voluntary school, of any of their functions under the Act.

(i) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 117, pp. 266 and 267, *post*.

(k) **" Managers or governors ".**—See note (d) to section 17, p. 122, *ante*.

(l) **" School premises ".**—See the definition of " premises " in section 114 (1), p. 255, *post*.

(m) **" Religious instruction ".**—As to the position prior to the present Act, see *A. G. and Board of Education* v. *West Riding of Yorkshire County Council* [1907] A.C. 29; 19 Digest 558, *28*. See also the general note to this section. As to the provisions of this Act relating to the inspection of religious instruction, see section 77, p. 213, *post*.

(n) **" It shall not be required ".**—This sub-section re-enacts in identical terms part of section 27 (1) (*a*) of the Education Act, 1921; 7 Halsbury's Statutes 142.

(o) **" Parent ".**—By section 114 (1), p. 255, *post*, this term, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(p) **" Requests ".**—As to the form of such a request, see note (e), *ante*.

(q) **" The pupil shall be excused ".**—Excusal from attendance at religious worship and for religious instruction does not excuse entire absence from school during the period of such worship or instruction, except as is provided in sub-section (5) of this section. The pupil remains subject to the provisions relating to compulsory school attendance—see sections 35–40 inclusive, pp. 155 to 163, *post*.

(r) **" The pupil may be withdrawn from the school ".**—This sub-section re-enacts, with slight modification, section 13 of the Education Act, 1936; 29 Halsbury's Statutes 127.

(s) **" Directions ".**—As to the revocation or variation of directions given by a local education authority, see section 111, p. 254, *post*.

(t) **" Secular instruction ".**—See section 23, p. 134, *ante*, and, in particular, note (e) to that section.

(u) **" The hours normally set apart ".**—Under the present Act no restriction is placed upon the times at which religious instruction shall be given, as was the case under the previous law. Section 27 (1) (*b*) of the Education Act, 1921; 7 Halsbury's Statutes 142, formerly provided that any religious observance practised or religious instruction given should be at the beginning or end or at the beginning and the end of a meeting of the school.

(v) **" School hours ".**—See section 23 (3), p. 134, *ante*.

26. Special provisions as to religious education in county schools.—Subject as hereinafter provided, the collective worship (a) required by subsection (1) of the last foregoing section shall not (b), in any county school (c), be distinctive of any particular religious denomination, and the religious instruction given to any pupils (d) in attendance at a county school in conformity with the requirements of subsection (2) of the said section shall be given in accordance with an agreed syllabus (e) adopted for the school or for those pupils and shall not include any catechism or formulary which is distinctive of any particular religious denomination (f):

Provided that, where a county secondary school is so situated that arrangements cannot conveniently be made for the withdrawal of pupils (g) from the school in accordance with the provisions of this Act to receive religious instruction elsewhere, then, if the local education authority are satisfied:—

(*a*) that the parents of pupils in attendance at the school desire them to receive religious instruction in the school in accordance with the tenets of a particular religious denomination; and

(*b*) that satisfactory arrangements have been made for the provision of such instruction to those pupils in the school, and for securing that the cost of providing such instruction to those pupils in the school will not fall upon the authority;

the authority shall, unless they are satisfied that owing to any special circumstances it would be unreasonable so to do, provide facilities for the carrying out of those arrangements. **[283]**

NOTES

The provisions of sections 25–30 inclusive, p. 139, *ante*, to p. 147, *post*, are considered in the general note to section 25.

(a) **" Collective worship ".**—See note (e) to section 25, p 141, *ante*.

(b) **" Shall not ".**—As to the enforcement of this requirement, see section 99, p. 237, *post*.

(c) **" County school ".**—See section 9 (2), p. 100, *ante*.

(d)" **Pupils ".**—By section 114 (1), p. 255, *post*, this term where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(e) **" Agreed syllabus ".**—By section 114 (1), p. 255, *post*, the term means an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to the Act, p 286, *post*, and adopted or deemed to be adopted thereunder. See also section 29, p. 146, *post*, as to the power of a local education authority to appoint a standing advisory council

on religious matters to advise the authority on matters relating to religious instruction in accordance with an agreed syllabus

(f) **"Distinctive of any particular religious denomination"**.—The requirement that the religious instruction to be given in county schools must not include any distinctive catechism or formulary is a re enactment of section 28 of the Education Act, 1921, 7 Halsbury's Statutes 143, which itself originated in section 14 of the Elementary Education Act, 1870 (the "Cowper Temple" clause)—see the general note to section 15 p 113 *ante*

(g) **"Withdrawal of pupils"**.—See section 25 (5), p 140, *ante*, and the general note to that section

27. Special provisions as to religious education in controlled schools.—(1) Where the parents (a) of any pupils (b) in attendance at a controlled school (c) request (d) that they may receive religious instruction in accordance with the provisions of the trust deed (e) relating to the school (f) or where provision for that purpose is not made by such a deed in accordance with the practice observed in the school before it became a controlled school (g), the foundation managers or foundation governors (h) shall, unless they are satisfied (i) that owing to special circumstances it would be unreasonable so to do make arrangements for securing that such religious instruction is given to those pupils at the school during not more than two periods in each week [284]

(2) Without prejudice to the duty to make such arrangements as aforesaid whatever the number of the teaching staff of the school, where the number of the teaching staff of a controlled school exceeds two the teaching staff shall include (k) persons (hereinafter referred to as "reserved teachers") (l) selected for their fitness and competence to give such religious instruction as is required to be given under such arrangements and specifically appointed to do so

Provided that the number of reserved teachers in any controlled school shall not exceed one fifth of the number of the teaching staff of the school including the head teacher, so, however, that where the number of the teaching staff is not a multiple of five it shall be treated for the purposes of this subsection as if it were the next higher multiple thereof [285]

(3) The head teacher of a controlled school shall not while holding that position be a reserved teacher, but before appointing any person to be the head teacher of such a school the local education authority shall inform the managers or governors (m) of the school as to the person whom they propose to appoint and shall consider any representations made by the managers or governors with respect to the proposed appointment [286]

(4) Where the local education authority propose to appoint any person to be a reserved teacher in a controlled school, the authority shall consult the foundation managers or foundation governors of the school, and, unless the said managers or governors are satisfied as to that person's fitness and competence to give such religious instruction as is required in pursuance of such arrangements as aforesaid the authority shall not appoint that person to be a reserved teacher [287]

(5) If the foundation managers or foundation governors of a controlled school are of opinion that any reserved teacher has failed to give such religious instruction as aforesaid efficiently and suitably they may require the authority to dismiss (n) him from employment as a reserved teacher in the school [288]

(6) Subject to any arrangements made under subsection (1) of this section, the religious instruction given to the pupils in attendance at a controlled school shall be given in accordance with an agreed syllabus (o) adopted for the school or for those pupils [289]

NOTES

The provisions of sections 25–30 inclusive, as they relate to religious education, are considered in the general note to section 25, p 139, *ante* The appointment and dismissal of reserved teachers and consultation between the managers or governors and the local education authority regarding the appointment of the head teacher of a controlled school are considered in the general note to section 24, p 136, *ante* The position of controlled schools under the Act is discussed in the general note to section 15, p 113, *ante*

(a) **"Parents"**.—By section 114 (1), p 255, *post*, "parent", in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(b) **"Pupils".**—The term "pupil" (where used without qualification) is defined in section 114 (1), p. 255, *post*, as a person of any age for whom education is required to be provided under the Act.

(c) **"Controlled school".**—See section 15, p. 113, *ante*.

(d) **"Request".**—As to the form of such a request, see note (e) to section 25, p. 141, *ante*

(e) **"Trust deed".**—Section 114 (1), p. 255, *post*, defines the term, in relation to any voluntary school, as including any instrument (not being an instrument of management, instrument of government, rules of management or articles of government made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof. The definition will include orders and schemes made by the Charity Commissioners or the Board of Education (now the Minister) under the Charitable Trusts Acts or the Endowed Schools Acts, etc. Section 67 (3), p. 203, *post*, provides that where any trust deed relating to a voluntary school makes provisions whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious instruction given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question shall be determined in accordance with the provisions of the trust deed.

(f) **"School".**—The term is defined in section 114 (1), p. 255, *post*, but is, of course, to be understood subject to the qualification introduced by this section.

(g) **"Before it became a controlled school".**—As to the time at which and the manner in which a school becomes a controlled school, see sections 15, p. 113, *ante*, and 32, p. 150, *post*

(h) **"Foundation managers or foundation governors".**—In relation to any school, this term, by section 114 (1), p. 255, *post*, means managers or governors appointed otherwise than by a local education authority or a minor authority in accordance with the provisions of the trust deed for the school. See also section 18 (3), p. 127, *ante*, and 19 (2), p. 129, *ante*.

(i) **"Shall, unless they are satisfied".**—As to the power of the Minister to prevent the unreasonable exercise of this function, see section 68, p. 205, *post*.

(k) **"The teachers shall include".**—As to the enforcement of this and other requirements in the section, see section 99 (1), p. 237, *post*.

(l) **"Reserved teachers".**—As to the appointment and dismissal of reserved teachers in relation to teachers generally, see the general note to section 24, p. 136, *ante*. The term "reserved teacher" first appeared in the Education Act, 1936; 29 Halsbury's Statutes 118, in relation to teachers appointed for a similar purpose in schools in respect of which a grant was made by the local education authority under section 8 of that Act (now special agreement schools—see section 28 (3) and (4), p. 144, *post*), and has been adopted in relation also to controlled schools which are created under this Act. It will be noted that though the subsection refers to "persons" the effect of the proviso to the subsection is such that there will be only one reserved teacher for any school having a total teaching staff of three, four or five. It should be noted that section 30, p. 147, *post*, has only a limited application to reserved teachers. The head teacher of a controlled school cannot be a reserved teacher (subsection (3) of this section) whilst holding that position.

(m) **"Managers or governors".**—See note (d) to section 17, p. 122, *ante*.

(n) **"Dismiss".**—The power given to the foundation managers or foundation governors by this subsection only enables them to require the local education authority to dismiss a reserved teacher from employment as a reserved teacher in that particular school. There is, therefore, no reason why the teacher should not continue to be employed if the authority thinks fit (subject to subsection (4) of this section or section 28 (3), p. 144, *post*), as a reserved teacher in any other controlled school or in a special agreement school, or even as one of the teachers who are not reserved teachers in the same school.

(o) **"Agreed syllabus".**—By section 114 (1), p. 255, *post*, the term means an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to the Act, p. 286, *post*, and adopted or deemed to be adopted thereunder. See also section 29, p. 146, *post*.

28. Special provisions as to religious education in aided schools and in special agreement schools.—(1) The religious instruction given to the pupils (a) in attendance at an aided school (b) or at a special agreement school (c) shall be under the control of the managers or governors (d) of the school (e) and shall be in accordance with any provisions of the trust deed (f) relating to the school, or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school (g):

Provided that where the parents (h) of pupils in attendance at the school desire them to receive religious instruction in accordance with any agreed syllabus (i) adopted by the local education authority (k) and cannot with reasonable convenience cause those pupils to attend any school at which that syllabus is in use, then, unless the authority are satisfied that owing to any special circumstances it would be unreasonable so to do, arrangements shall be made (l) for religious instruction in accordance with that syllabus to be given to those pupils in the school during the times set apart (m) for the giving of religious instruction therein, and such arrangements shall be made by the managers or governors of the school, so, however, that if the local education authority are satisfied that the managers or governors are unwilling to make such arrangements the arrangements shall be made by the authority.

[290]

(2) If a teacher appointed to give in an aided school religious instruction other than instruction in accordance with an agreed syllabus fails to give such instruction efficiently and suitably, he may be dismissed (n) on that ground by the managers or governors of the school without the consent of the local education authority [291]

(3) Where the special agreement (o) made with respect to any special agreement school provides for the employment of reserved teachers (p), the local education authority shall, when they propose to appoint any person to be such a teacher in the school, consult the foundation managers or foundation governors (q) of the school, and unless the said managers or governors are satisfied as to that person's fitness and competence to give such religious instruction as aforesaid, the authority shall not appoint that person to be such a teacher [292]

(4) If the foundation managers or foundation governors of a special agreement school are of opinion that any such reserved teacher as aforesaid has failed to give, efficiently and suitably, such religious instruction as he was appointed to give, they may require the authority to dismiss (r) him from employment as a reserved teacher in the school [293]

NOTES

The provisions of sections 25–30 inclusive, as they relate to religious education, are considered in the general note to section 25, p 139, *ante* The appointment and dismissal of reserved teachers in special agreement schools and controlled schools, and of teachers in aided schools, are considered in the general note to section 24, p 136, *ante* The position of aided schools and of special agreement schools under the Act is discussed in the general note to section 15, p 113, *ante*

(a) **"Pupils".**—By section 114 (1), p 255, *post*, "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act

(b) **"Aided school".**—See section 15, p 113 *ante* From 1st April, 1945, until the time when, as regards any voluntary school, an order is made under section 15, *supra*, determining whether the school is to be a controlled school, an aided school or a special agreement school, the school is to be regarded as an aided school, subject to certain modifications of the provisions of the Act relating to aided schools (section 32, p. 150, *post*)

(c) **"Special agreement school".**—See section 15, p 113, *ante* So far as special agreement schools are concerned the section replaces in a somewhat modified form section 9 of the Education Act, 1936

(d) **"Managers or governors".**—See note (d) to section 17, p 123, *ante*

(e) **"School".**—The word is defined in section 114 (1), p 255, *post*

(f) **"Trust deed".**—Section 114 (1), p 255, *post*, defines the term, in relation to any voluntary school, as including any instrument (not being an instrument of management, instrument of government, rules of management or articles of government made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof The definition will include orders and schemes made by the Charity Commissioners or the Board of Education (now the Minister) under the Charitable Trusts Acts or the Endowed Schools Acts, etc Section 67 (3), p 203, *post*, provides that where any trust deed relating to a voluntary school makes provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious instruction given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question shall be determined in accordance with the provisions of the trust deed

(g) **"Voluntary school".**—See section 15, p 113, *ante*

(h) **"Parents".**—By section 114 (1), p 255, *post*, "parent", in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(i) **"Agreed syllabus".**—By section 114 (1), p 255, *post*, the term, subject to subsection (4) of that section, means an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to the Act, p 286, *post*, and adopted or deemed to be adopted thereunder The right of parents to obtain agreed syllabus instruction for their children in the manner specified in the proviso to subsection (1) of this section was first given by section 12 of the Education Act, 1936, 29 Halsbury's Statutes 127, which is re-enacted with slight modification See also section 29, p 146, *post*

(k) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(l) **"Arrangements shall be made".**—As to the power of the Minister to prevent the unreasonable exercise of this function, see section 68, p 205, *post*

(m) **"During the times set apart".**—Under the present Act no restriction is placed upon the times at which religious instruction shall be given, as was the case under the previous law. Section 27 (1) (*b*) of the Education Act, 1921, 7 Halsbury's Statutes 142, formerly provided that any religious observance practised or religious instruction given should be at the beginning or end or at the beginning and the end of a meeting of the school Furthermore section 25 (6), p 140, *ante*, now prohibits the local education authority from giving directions regarding secular instruction so as to interfere with the reasonable facilities for religious instruction in the school during school hours, or so as to prevent a pupil from receiving such instruction during the hours normally set apart for that purpose, unless arrangements are made for the pupil to receive such instruction in the school at some other time Consequently under this section the managers or governors may fix the times for the giving of religious instruction in the school and, if ultimately

the duty falls upon the local education authority to make arrangements for the provision of agreed syllabus instruction, the instruction must be given at the times fixed by the managers or governors

(n) **"Dismissed".**—In aided schools, unlike other voluntary schools, the teachers are to be appointed by the managers or governors, but may not be dismissed without the consent of the local education authority, except in pursuance of this subsection (proviso (a) to section 24 (2), p 136, *ante*) The power given by this subsection may be compared with the power of the managers or governors in controlled schools and special agreement schools, not to dismiss, but to require the dismissal of reserved teachers in such schools (section 27 (5), p 143, *ante*, and sub section (4) of this section) See also the general remarks regarding dismissal of teachers in the general note to section 24, p 136, *ante*

(o) **"Special agreement".**—See section 15, p 113, *ante*, and the Third Schedule, p 283, *post* Section 114 (1), p 255, *post*, defines the term as an agreement made under the provisions of the Third Schedule to the Act

(p) **"Reserved teachers".**—Paragraph 7 of the Third Schedule, p 284, *post*, enacts that a special agreement may provide for the giving of religious instruction in the school in accordance with the provisions of the trust deed relating to the school, or, where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school and for the employment in the school, for the purpose of giving such religious instruction, of a specified number of reserved teachers Neither this section nor the Third Schedule, p 283, *post* defines the term 'reserved teachers" so that, though section 27, p 143, *ante*, refers only to controlled schools, it is necessary to have regard to that section (subsection (2)) in order to discover that it means 'persons selected for their fitness and competence to give such religious instruction as is required to be given" under the arrangements referred to in paragraph 7 of the Third Schedule, *supra*, "and specifically appointed to do so" The term is derived from section 9 (1) (*a*) of the Education Act, 1936 29 Halsbury's Statutes 125

(q) **"Foundation managers or foundation governors".**—In relation to any voluntary school, this term, by section 114 (1), p 255, *post*, means managers or governors appointed otherwise than by a local education authority or a minor authority for the purposes of securing, so far as is practicable, that the character of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto See also sections 18 (3), p 127, *ante*, and 19 (2), p 129, *ante*

(r) **"Dismiss".**—The power given to the foundation managers or foundation governors by this subsection only enables them to require the local education authority to dismiss a reserved teacher from employment as a reserved teacher in that particular school There is, therefore, no reason why the teacher should not continue to be employed, if the authority thinks fit (subject to section 27 (4), p 143, *ante*, and subsection (3) of this section) as a reserved teacher in any other special agreement school or in a controlled school, or even as one of the teachers who are not reserved teachers in the same school

29. Provisions as to religious instruction in accordance with agreed syllabus.—(1) The provisions of the Fifth Schedule to this Act (a) shall have effect with respect to the preparation, adoption and reconsideration of an agreed syllabus of religious instruction (b) [294]

(2) A local education authority (c) shall have power to constitute a standing advisory council on religious matters connected with the religious instruction (d) to be given in accordance with an agreed syllabus and, in particular, as to methods of teaching, the choice of books, and the provision of lectures for teachers [295]

(3) The method of appointment of the members of any council constituted under the last foregoing subsection and the term of office and conditions of retirement of the members thereof shall be such as may be determined (e) by the local education authority [296]

(4) A local education authority shall have regard (f) to any unanimous recommendations which may be made to them by any conference convened in accordance with the provisions of the said Fifth Schedule with respect to the expediency of constituting such an advisory council as aforesaid or with respect to the method by which or the terms and conditions upon which members of any such council shall be appointed [297]

NOTES

Subsection (1) of this section links the Fifth Schedule, p 286, *post*, with those provisions of the Act which require or enable religious instruction to be given in various classes of schools in accordance with an agreed syllabus

Subsections (2) to (4) enables the local education authority to constitute a standing advisory committee on religious education to advise the authority upon matters connected with religious instruction to be given in accordance with an agreed syllabus and in particular as to methods of teaching, the choice of books and the provision of lectures for teachers

The conference to be convened under the Fifth Schedule, *supra*, though it will not necessarily cease to exist in law, will finish its allotted tasks after making a unanimous recommendation or recommendations regarding the adoption of an agreed syllabus (or syllabuses) for the authority's area for, under paragraph 12 of the Schedule, the constitution of a further conference is necessary if the preparation of further syllabuses becomes necessary at a later date This section, however, fills the important need of providing a continuing committee to make suggestions for the improvement of the syllabus and analogous subjects and should be of great value There is no legal reason why a local education authority should not appoint the members of the conference constituted under the Fifth Schedule, *supra*, as the standing advisory council under this section

(a) **"The Fifth Schedule to this Act".**—See p. 286, *post.*

(b) **"An agreed syllabus of religious instruction".**—Section 114 (1), p. 255, *post*, defines the expression "agreed syllabus" as an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to the Act and adopted or deemed to be adopted thereunder. The definition, however, is subject to the provisions of subsection (4) of that section, by which a syllabus of religious instruction adopted by a former authority (see the *definition of this term in section 114 (1), supra*), *before 1st April, 1945, for use in a school which* after that date is a county school or a voluntary school, or for any class or description of pupils, is to be deemed to be the agreed syllabus for the school or pupils until an agreed syllabus is prepared under the Acts. If no such syllabus is prepared and adopted or deemed to be adopted before 1st April, 1947, such a syllabus will cease to be deemed an agreed syllabus. Even if a local education authority fails to adopt a new syllabus within the two years it is hardly likely that the situation contemplated after that time will arise in view of the duties of the Minister under paragraphs 10 and 11 of the Schedule and under section 99, p 237. Ministry of Education Circular (15th August, 1944) reminds local education authorities of their duty to adopt an agreed syllabus not later than 1st April, 1945, and points out that section 114 (4), *supra*, meets the immediate needs of authorities which have already adopted a syllabus of religious instruction, so *that in their case the convening of a conference under the terms of the Fifth Schedule is not a* matter of urgency. Authorities which have not adopted a syllabus should, however, convene a conference at an early date. In the Minister's view it is unlikely that the framing of a completely new syllabus could be completed by 1st April next, but he suggests that it is open to the conference to recommend the adoption of an existing syllabus, whether provisionally or otherwise.

(c) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly. See sections 117 and 118, pp. 266 and 267, *post*.

(d) **"Religious instruction".**—The circumstances in which an agreed syllabus must or may be used in schools maintained by a local education authority are as follows:

(1) **County schools.**—Subject to the parent's power of withdrawal under section 25, p. 139, *ante*, and in the case of county secondary schools to the provision, in certain circumstances, of facilities for the giving of other forms of religious instruction, religious instruction must be given in accordance with an agreed syllabus;

(2) **Controlled schools.**—Subject to the parent's right of withdrawal under section 25, *supra*, and to the provision, where the parents of pupils at the school so request, for not more than two periods in each week, of religious instruction in accordance with the trust deed or the practice observed before the school became a controlled school, religious instruction must be given in accordance with an agreed syllabus.

(3) **Aided and Special Agreement Schools.**—Though religious instruction is normally to be given in accordance with the trust deed or previous practice, arrangements are to be made for the provision of agreed syllabus instruction for pupils whose parents so desire and cannot reasonably cause them to attend school where the syllabus is in use.

(e) **"Shall be such as may be determined".**—This gives the local education authority a wide discretion as to the constitution of such a council, subject to regard being had to the unanimous recommendation of any conference constituted under the Fifth Schedule, p. 286, *post*.

The provisions of the Local Government Act, 1933, relating to the appointment of committees and sub-committees, will not apply to the appointment of a standing advisory council under this section.

(f) **"Shall have regard".**—The extent of this requirement is not entirely clear. On the one hand it may be argued that the subsection has been complied with if the local education authority considers such a recommendation but decides not to accept it; on the other hand it may well be argued that the subsection requires the authority to accept any such recommendation which might, as stated in the general note to this section, put forward the members of the conference as a suitable body for appointment. Probably the true meaning is that the authority is required to give consideration to the resolution but not necessarily to adopt it. In the event of refusal to adopt such a recommendation, the Minister's powers under section 68, p. 205, *post*, are sufficient to enable him to require the authority to do so, if he thinks its refusal unreasonable

30. Saving as to position of teachers.—Subject as hereinafter provided, no person shall be disqualified (a) by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in a county or in any voluntary school (b), or from being otherwise employed (c) for the purposes of such a school; and no teacher in any such school shall be required to give religious instruction or receive any less emolument (d) or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious instruction or by reason of his religious opinions or of his attending or omitting to attend religious worship:

Provided that, save in so far as they require that a teacher shall not receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he gives religious instruction or by reason of his religious opinions or of his attending religious worship, the provisions of this section shall not apply with respect to a teacher in an aided school (e) or with respect to a reserved teacher (f) in any controlled school (g) or special agreement school (h). [298]

NOTES

The appointment and dismissal of teachers generally is considered in the general note to section 24, p. 136, *ante*. The present section, as a statutory exposition of the law, is new, but regard may be had to the case of *Smith* v. *Macnally* [1912] 1 Ch. 816; 19 Digest 605, *305*.

The application of the section to teachers in aided schools or to reserved teachers in controlled schools or special agreement schools is limited by the proviso to the section.

(a) **"No person shall be disqualified".**—Presumably the provisions of section 99, p. 237, *post*, apply with respect to the enforcement of the duties imposed by this section as they do in a case of other provisions of the Act which impose duties upon either the local education authority or the managers or governors of a school. It would appear, however, to be somewhat more difficult to apply these enforcement provisions since it would be simple for an authority, or the managers or governors of a school, to refrain from offering an appointment, or promotion, whilst refraining from stating a reason

(b) **"In a county school or in a voluntary school".**—See section 9 (2), p. 100, *ante*, and as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p. 113, *ante*

(c) **"Or from being otherwise employed".**—It is not entirely clear what this phrase includes. If the phrase "a teacher in a school" implies full-time employment, it would include visiting teachers and teachers employed in other premises (e.g., a cookery school) to which pupils are sent from a number of schools In any case it would include caretaking and other staff whose work is not connected with teaching

(d) **"Any less emolument".**—Section 88, p 225, *post*, enables the Minister to secure that the remuneration paid by local education authorities to teachers is in accordance with scales approved by him.

(e) **"Aided school".**—See section 15, p 113, *ante*, and as to the appointment and dismissal of teachers in such a school, see sections 24 (2) and 28 (2), pp. 136 and 144, *ante*.

(f) **"Reserved teacher".**—See note (e) to section 27, p. 144, *ante*, and note (p) to section 28, p. 146, *ante*.

(g) **"Controlled school".**—See section 15, p 113, *ante*, and, as to the appointment and dismissal of reserved teachers in controlled schools, section 27, p. 143, *ante*

(h) **"Special agreement school".**—See section 15, p. 113, *ante*, and, as to the appointment and dismissal of reserved teachers in special agreement schools, section 28, p 144, *ante*.

Transitional Provisions as to County and Voluntary Schools

31. Transitional provisions as to the separation of primary and secondary schools.—(1) The provisions of this section shall have effect with respect to the area of every local education authority (a), until the local education order (b) for that area first comes into operation. [299]

(2) Save as may be otherwise directed (c) by the Minister, every county school (d) and voluntary school (e) which immediately before the commencement of this Part of this Act (f) was used for providing primary education (g) shall be managed and conducted as a primary school (h), every such school which was used for providing secondary education (i) shall be managed and conducted as a secondary school (j), and every such school which was used for providing primary and secondary education indiscriminately (k) shall be managed and conducted as if it were a primary school [300]

(3) If it appears to the Minister to be expedient that any county school or voluntary school should be managed and conducted otherwise than in accordance with the provisions of the last foregoing sub-section he may direct that the school be managed and conducted as a primary school or as a secondary school as the case may be .

Provided that no such direction shall be given except after consultation with the local education authority and, in the case of a voluntary school, with the managers or governors (l) of the school. [301]

(4) Where it appears to a local education authority that the process of securing that primary and secondary education shall be provided in separate schools (m) can be accelerated by the giving of a direction under this section, it shall be the duty of the authority to apply to the Minister for such a direction. [302]

NOTES

This section applies to the period between the date when this Part of the Act comes into operation, viz.: 1st April, 1945, and the date on which the local education order for a particular area, which is to be made by the Minister under section 12, p. 107, *ante*, after he has approved the development plan for the area which has been prepared by the local education authority and approved by the Minister under section 11, p. 103, *ante*, first comes into operation

This and the next following section are intended to provide as smooth a transition as possible from the system and organisation in existence before 1st April, 1945, to the system and organisation created by the present Act. This section deals with the completion of reorganisation of schools into separate primary and secondary schools as required by section 8 (2) (a), p 97, *ante*, which provides that in fulfilling their duties of securing sufficient schools for providing primary and secondary education local education authorities shall have regard (*inter alia*) to the need for securing that primary and secondary education are provided in separate schools

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p 271, *post*. Under previous law there have been separate local education authorities for elementary and secondary education, the former being —

(*a*) county borough councils ,

(*b*) non-county borough councils with a population of over 10,000 according to the 1901 census ;

(*c*) urban district councils with a population of over 20,000 according to the 1901 census ,

(*d*) county councils (but excluding the area of any borough or urban district council which was a separate authority)

and the latter being the county and county borough councils (section 3 of the Education Act, 1921 , 7 Halsbury's Statutes 131), but with supplementary powers for councils of non county boroughs and urban districts under section 70 of the Education Act, 1921 , 7 Halsbury's Statutes 168 Under the present Act county and county borough councils are to be the local education authorities for all purposes (section 6, p 87, *ante*) As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **" Local education order ".**—This term is defined in section 114 (1), p 255, *post*, as an order made by the Minister under section 12, p 107, *ante* Under section 11 (1), p 103, *ante*, the local education authority is required, " as soon as may be " after 1st April, 1945, to estimate the immediate and prospective needs of its area, having regard to the provisions of the Act and of any regulations made under the Act and to the functions relating to primary and secondary education thereby conferred upon the authority Having done so, the authority is required to prepare and submit to the Minister before 1st April, 1946, or within such extended period as the Minister may allow in a particular case, a " development plan ", showing the action which the authority proposes should be taken for securing that there will be sufficient primary and secondary schools available for the area and showing also the successive measures by which it is proposed to accomplish that purpose After the development plan has been approved by the Minister under section 11 (4), p 104, *ante*, the Minister is to make a local education order for the area of the authority under section 12, p 107, *ante* The order is to—

(1) specify the county schools and voluntary schools to be maintained by the authority ,

(2) define, to such extent as the Minister considers desirable, the duties of the authority as to the measures to be taken for securing that there will be sufficient primary and secondary schools available for the area ,

(3) make provision as to which of the schools maintained or assisted by the authority for providing primary and secondary education are to be primary and secondary schools respectively ,

(4) make provision as to which of the schools referred to if any, are, for the time being, to be organised for the provision of both primary and secondary education

(c) **" Save as may be otherwise directed "** —This refers not only to subsection (3) of this section, but also to the proviso to section 114 (3), p 258, *post*, which enacts that where the primary education provided in a county or voluntary school which is used for providing both primary and secondary education is provided in a separate junior or preparatory department, the Minister may direct that the school shall be deemed for the purposes of the Act to be a secondary school

As to the revocation and variation of directions given by the Minister under the Act, see section 111, p 254, *post*

The duties imposed under this section may be enforced by the Minister under section 99, p 237, *post*

(d) **" County school ".**—See section 9 (2), p 100, *ante*

(e) **" Auxiliary school ".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p 113, *ante*

(f) **" Immediately before the commencement of this Part of this Act ".**—This means immediately before 1st April, 1945 (section 119, p 267, *post*)

(g) **" Primary education ".**—Section 114 (1), p 255, *post*, provides that this term has the meaning assigned to it by section 8 (1) (*a*) p 97, *ante* namely, full time education suitable to the requirements of junior pupils, the latter being defined by section 114 (1), *post*, as children who have not attained the age of twelve years

(h) **" Managed and conducted as a primary school ".**—The term " primary school " is defined by section 114 (1), p 255, *post*, as (subject to the provisions of section 114 (3), *ibid*) a school for providing primary education Though nursery schools are and special schools may be within the scope of this definition (see, as to nursery schools, section 9 (4), p 100, *ante*), they do not fall within the scope of this section since they are neither county schools nor voluntary schools (section 9 (2), *ibid*)

The management and conduct of primary schools is dealt with in sections 17, 18, 20 and 21, pp 121, 127, 130 and 132, *ante*, though in the case of voluntary primary schools those provisions are modified during the period to which this section applies by the transitional provisions as to the management and maintenance of voluntary schools in section 32, p 150, *post*

(i) **" Secondary education ".**—Section 114 (1), p 255, *post*, provides that this term has the meaning assigned to it by section 8 (1) (*b*), p 97, *ante*, namely, " full time education suitable to the requirements of senior pupils, other than such full time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of the Act relating to further education " By section 114 (1), *post*, " senior pupil " means a person who has attained the age of twelve years but has not attained the age of nineteen years

(j) **" Managed and conducted as a secondary school ".**—The term " secondary school " is defined by section 114 (1), p 255, *post*, as (subject to the provisions of section 114 (3), *ibid*) a school for providing secondary education Though special schools may be within the scope of this definition they do not fall within the scope of this section since they are neither county schools nor voluntary schools (section 9 (2), p 100, *ante*)

The management and conduct of secondary schools is dealt with in sections 17, 19, 20 and 21, pp 121, 129, 130 and 132, *ante*, though in the case of voluntary secondary schools those provisions are modified during the period to which this section applies by the transitional provisions as to the management and maintenance of voluntary schools in section 32, p 150, *post*

(k) **" Indiscriminately ".**—The phrase " primary and secondary education indiscriminately " is presumably intended to refer mainly to elementary schools which have not hitherto been reorganised The use of the word " indiscriminately " appears, however, to be unnecessary and, possibly, confusing, since it would appear to have the effect of excluding schools where the provision of primary and secondary education is not " indiscriminate " but separately provided, either in separate departments or otherwise Whilst in such cases the Minister may give special directions under subsection (3) of this section or under section 114 (3), p 258, *post*,

unless and until such directions are given there seems to be nothing in the Act which indicates how they are to be managed and conducted.

The provision that schools to which this part of the subsection applies shall be managed and conducted as primary schools has presumably been adopted because the schools will generally be small rural schools catering for the complete age range of children from five to fourteen or fifteen years of age, in which event the majority of the children will probably be junior pupils.

(l) **" Managers or governors ".**—See note (d) to section 17, p. 123, *ante*, and section 32, p. 150, *post*.

(m) **" Separate schools ".**—The duty of securing that primary and secondary education shall be provided in separate schools is imposed by section 8 (2) (*a*), p. 97, *ante*. As to the meaning of the term, see note (o) to section 8, p. 98, *ante*.

32. Transitional provisions as to the management and maintenance of voluntary schools.—(1) Any school which became a voluntary school (a) by virtue of the provisions of subsection (3) of section nine (b) of this Act shall, during the period until the question whether the school shall be a controlled school (c) an aided school (d) or a special agreement school (e) is determined by an order (f) made under this Act with respect to the school or by reason of the expiration of the time limited by this Act (g) for making application for such an order, be deemed to be an aided school so, however, that the provisions of this Act relating to aided schools shall, in relation to any such school as aforesaid, have effect during that period subject to the following modifications, that is to say :—

(*a*) the provisions relating to the constitution of a body of managers or governors (h) shall not apply and the body of managers or governors (i) shall be constituted in like manner as the body of managers was constituted (k) immediately before the date of the commencement of this Part of this Act :

(*b*) the provisions relating to rules of management or articles of government (l) shall not apply and the school shall be managed and conducted in like manner as it was immediately before that date (m) :

(*c*) the school shall be maintained in like manner as it was immediately before that date (n), but the local education authority (o) shall not require any alteration (p) to be made to the school premises (q) :

(*d*) the Minister shall not, under the powers conferred by this Act, make to the managers or governors of the school any maintenance contribution (r) in respect of alterations or repairs to the school premises. [303]

(2) If, during the period during which a school is by virtue of this section deemed to be an aided school, the Minister is satisfied that the managers or governors of the school have failed to discharge any of their duties with respect to the maintenance of the school he may authorise the local education authority to discharge that duty on behalf of the managers or governors and shall reimburse to the authority any sums which in his opinion have been properly expended by them for that purpose ; and the amount of any sums so reimbursed shall be a debt due to the Crown (s) from the managers or governors. [304]

NOTES

This section, which applies only to schools which have become voluntary schools by virtue of section 9 (3), p. 100, *ante*, operates, as regards any particular voluntary school, only during the period between the date on which this Part of the Act comes into operation, viz., 1st April, 1945, and the date on which the question is determined as to whether the school is to be a controlled school, an aided school or a special agreement school under section 15, p. 113, *ante*.

Until that event all schools which become voluntary schools under section 9 (3), *ante*, are to be deemed to be aided schools, subject to certain modifications, contained in this section, of those provisions of the Act which apply to aided schools.

Like the last preceding section (section 31, p. 148, *ante*) this section is intended to provide as smooth a transition as possible from the system and organisation in existence before 1st April, 1945, to that created by the present Act.

(a) **" Voluntary school ".**—See sections 9 (2) and (3), and 15, pp. 100 and 113, *ante*.

(b) **" Sub-section (3) of section nine ".**—This provides that, subject to the provisions thereinafter contained as to the discontinuance of voluntary schools (sections 14 and 16, pp. 112 and 119, *ante*), every school which, immediately before 1st April, 1945, was a public elementary school provided otherwise than by a former authority, is, if it was then maintained by a former authority, to be maintained as a voluntary school by the local education authority under this Act, i.e., every school which was formerly a non-provided public elementary school maintained

by a local education authority under the Education Act, 1921, or any other previous statute now repealed.

(c) **"Controlled school".**—See section 15, p. 113, *ante*.

(d) **"Aided school".**—See section 15, p. 113, *ante*.

(e) **"Special agreement school".**—See section 15, p. 113, *ante*, and the Third Schedule, p. 283, *post*.

(f) **"Determined by an order".**—The question is to be determined by an order which may be made by the Minister under section 15 (2), p. 113, *ante*, upon application being duly made to him under the proviso to that sub section within the time specified.

(g) **"Expiration of the time limited by this Act".**—If an application for an order determined whether a voluntary school is to be a controlled school, an aided school or a special agreement school is not duly made to the Minister within six months after the date on which the managers or governors receive notice of the approval of the development plan for the area the school will automatically become a controlled school (proviso to section 15 (2), p. 113, *ante*).

(h) **"Provisions relating to the constitution of a body of managers or governors".**—See sections 17–20, pp. 121 to 130, *ante*.

(i) **"Managers or governors".**—See note (d) to section 17, p. 123, *ante*.

(k) **"In like manner as the body of managers was constituted".**—See sections 30–36 of the Education Act, 1921; 7 Halsbury's Statutes 146–150. By section 99 (2), p. 237, *post*, if, in the case of any school to which this section applies, it appears to the Minister that by reason of the default of any person there is no properly constituted body of managers or governors, the Minister may make such appointments and give such directions as he thinks desirable for the purpose of securing that there is a properly constituted body of managers or governors thereof, and may give directions rendering valid any acts or proceedings which in his opinion are invalid or otherwise defective by reason of the default.

(l) **"Provisions relating to rules of management or articles of government".**—See sections 17 (2), (3), (4) and (5), p. 121, *ante*, 23, p. 134, *ante*, and 24, p. 136, *ante*.

(m) **"In like manner as it was immediately before that date".**—See sections 30 (4) and (5), and 35 of the Education Act, 1921; 7 Halsbury's Statutes 142, 143, as to management, and sections 27 and 29 of the Education Act, 1921; 7 Halsbury's Statutes 147, 149, as to conduct; also sections 9 and 10 of the Education Act, 1936; 29 Halsbury's Statutes 125.

(n) **"Maintained in like manner as it was immediately before that date".**—See sections 17 and 29 of the Education Act, 1921; 7 Halsbury's Statutes 137, 143. Compare these sections with the definition of "maintain" in section 114 (1) and (2), p. 255, *post*.

(o) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London or the Isle of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(p) **"Shall not require any alteration".**—See section 29 (2) (*d*) of the Education Act, 1921; 7 Halsbury's Statutes 144, and see the definition of "alterations" in section 114 (1), p. 255, *post*.

(q) **"School premises".**—The word "premises" is defined in section 114 (1), p. 255, *post*.

(r) **"Maintenance contribution".**—The term, in relation to any voluntary school, means a contribution payable under section 102, p. 242, *post* (section 114 (1), p. 255, *post*).

(s) **"Debt due to the Crown".**—As to the method of recovering debts due to the Crown, see the Administration of Justice (Miscellaneous Provisions) Act, 1933, section 4; 29 Halsbury's Statutes 641.

Primary and Secondary Education of pupils requiring Special Educational Treatment

33. Education of pupils requiring special educational treatment.—(1) The Minister shall make regulations (a) defining the several categories of pupils (b) requiring special educational treatment (c) and making provision as to the special methods appropriate for the education of pupils of each category (d). [305]

(2) The arrangements made by a local education authority (e) for the special educational treatment of pupils of any such category shall, so far as is practicable, provide for the education of pupils in whose case the disability is serious in special schools (f) appropriate for that category (g), but where that is impracticable, or where the disability is not serious, the arrangements may provide for the giving of such education in any school (h) maintained or assisted (i) by the local education authority. [306]

(3) The Minister may by regulations make provision as to the requirements to be complied with by any school (k) as a condition of approval of the school as a special school, and as to the withdrawal of approval from any school which fails to comply with requirements so prescribed (l) and, notwithstanding that the provisions of this Act requiring local education authorities to have regard to the need for securing that primary and secondary education (m) are provided in separate schools (n) do not apply with respect to special schools, such regulations may impose requirements as to the organisation of any special school as a primary school or as a secondary school (o). [307]

(4) The regulations made under this section (p) with respect to special

schools shall be such as to secure that, so far as practicable, every pupil in attendance at any such school will attend religious worship and religious instruction (q) or will be withdrawn from attendance (r) at such worship or instruction in accordance with the wishes of his parent (s) [308]

NOTES

Prior to the coming into operation of Part II of this Act, *i e*, 1st April, 1945, the law applying to the education of blind, deaf, defective and epileptic children was contained in Part V of the Education Act, 1921, the Education (Institution Children) Act, 1923, and the Education (Deaf Children) Act, 1937, 7 Halsbury's Statutes 159, 226, 30 *ibid* 179

This and the next succeeding section, in the words of the Explanatory Memorandum issued with the Bill (Cmd 6492 of 1943, p 8), "open the way to fuller and better provision for children handicapped by physical or mental disabilities they replace in general the provisions of Part V of the Education Act, 1921, and with certain other (sections in the Act) modify some of its provisions which have been found to hamper development in the past"

In the first place, the two sections extend the duty of ascertainment, hitherto confined to defective and epileptic children, to all types of children needing special educational treatment Hitherto, section 55 (1) of the Education Act, 1921, 7 Halsbury's Statutes 161, has required local education authorities, with the approval of the Board of Education, to make arrangements for ascertaining—

(*a*) what children in their areas, not being imbecile, and not being merely dull or backward, were defective, *i e*, what children by reason of mental or physical defect were incapable of receiving proper benefit from the instruction in the ordinary public elementary schools, but were not incapable by reason of that defect of receiving benefit from instruction in such special classes or schools as might be provided for defective children under Part V of that Act, and

(*b*) what children in their areas were epileptic children, *i e*, what children, not being idiots or imbeciles, were unfit by reason of severe epilepsy to attend the ordinary public elementary schools

Under section 34, p 154, *post*, it is the duty of every local education authority to ascertain what children in its area require special educational treatment By section 114 (1), p 255, *post*, 'special educational treatment' is given the meaning assigned to it by section 8 (2) (*c*), p 97, *ante*, namely, education in special schools or otherwise, by special methods appropriate for persons suffering from any disability of mind or body

The duty thus imposed upon local education authorities is much wider than it was under the Act of 1921, and the Act ensures that no child suffering from any disability of mind or body shall go unprovided for, and for the first time brings in what are known as maladjusted children

In the second place, the requirement in section 55 (3) of the Education Act, 1921, 7 Halsbury's Statutes 162, that a handicapped child must be certified as mentally or physically defective before he can be provided with education suited to his needs is removed In future, under section 34, p 154, *post*, no child will be certified as mentally defective so long as he remains within the education system The abolition of certification for the purposes of this Act is accompanied by the imposition of an obligation upon local education authorities under subsection (2) of this section to provide special educational treatment for the less severely handicapped children within the ordinary schools and for the more severely handicapped in special schools

Formerly the lower age of compulsory school attendance in the case of defective and epileptic children was seven years (Education Act, 1921, sections 53 and 54, 7 Halsbury's Statutes 160), though in the case of blind and deaf children the lower age limit was the same as in the case of normal children (Education Act, 1921, section 51, 7 Halsbury's Statutes 159), the lower age limit in the case of deaf children being reduced from seven to five by the Education (Deaf Children) Act, 1937, 30 Halsbury's Statutes 179 Now, however, no distinction is made in the lower limit of compulsory school age between normal children and children requiring special educational treatment (see sections 35 and 36, pp 155 and 157, *post*) Furthermore, the duty of ascertaining what children require special educational treatment is not limited to children of five and over but, by reason of the definition of "child" in section 114 (1), p 255, *post*, extends to all children not over compulsory school age For the purpose of fulfilling this duty the parent of any child who has attained the age of two years may be required to submit him for examination by a medical officer of the local education authority for advice as to whether he is suffering from any disability of mind or body (section 34 (1), p 154, *post*)

The parent of any child who has attained the age of two years may also request the local education authority to arrange for the child to be similarly examined (section 34 (2), *ibid*), this being a further innovation in the present Act

If, after considering the advice of a medical officer as a result of such a medical examination and any reports or other information available to the local education authority, the authority decides that the child requires special educational treatment, notice of the decision must be given to the parent and the authority is required to provide the treatment (section 34 (4), p 154, *post*)

A specific duty of a somewhat similar nature is, by section 57, p 192, *post*, laid upon the local education authority to require the compulsory medical examination of any child over two years of age who appears to the authority to be suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education at school If the authority's view is confirmed, a report that the child has been found incapable of receiving education at school must be issued to the local authority for the purpose of the Mental Deficiency Act, 1913, 11 Halsbury's Statutes 160, *i e*, as respects a county, the council of the county, and, as respects a county borough, the council of the borough (*ibid*, section 27, 11 Halsbury's Statutes 176) In other words, the report is to be issued by the authority in its capacity as local education authority under this Act to itself in its capacity as local authority under the Act of 1913 Before this is done, however, fourteen days' notice of the intention to issue a report must be given to the parent, who may refer the question whether the report should be issued to the Minister for his decision By section 57 (5), p 192, *post*, the local education authority is required to issue to the local authority under the Mental Deficiency Act, 1913, 11 Halsbury's Statutes 160, and to the parent, in the case of any child attending a school maintained by the

authority, or a special school not so maintained, who will require supervision after leaving school, a report to that effect before the child ceases to be of compulsory school age.

As to the upper limit of compulsory school age in the case of children who are registered pupils at a special school, see section 38, p. 160, *post*.

(a) **"Regulations".**—As to the making of regulations under the Act, see section 112, p. 254, *post*.

(b) **"Pupils".**—Section 114 (1), p. 255, *post*, defines "pupil", where used without qualification, as a person of any age for whom education is required to be provided under the Act. In addition to the general duty of providing education for children of compulsory school age (sections 35 and 38, pp. 155 and 160, *post*) the local education authority is required by sections 8 (2) (*b*), p. 97, *ante*, and 9 (4), p. 100, *ante*, to secure that provision is made for pupils between two and five years of age. Though section 8 (2) (*b*), *supra*, refers to the provision of nursery schools and nursery classes this is a form of education which is required to be provided under the Act and the regulations must therefore, cover children from two years of age upwards.

(c) **"Special educational treatment".**—Section 11 (1), p. 103, *post*, gives this term the meaning assigned to it by section 8 (2) (*c*), p. 97, *ante*, namely, education by special methods appropriate for persons suffering from any disability of mind or body. The duties imposed by this section are, as a result of this definition, of much wider application than were those imposed by Part V of the Education Act, 1921; 7 Halsbury's Statutes 159.

(d) **"Pupils of each category".**—Part V of the Education Act, 1921; 7 Halsbury's Statutes 159, dealt with the education of blind, deaf, defective and epileptic children. It did not apply to blind and deaf children who were also idiots or imbeciles (Education Act, 1921, section 52 (2), as amended by the Education (Institution Children) Act, 1923; 7 Halsbury's Statutes 159). By section 69 of the 1921 Act; 7 Halsbury's Statutes 167, "blind" meant too blind to be able to read the ordinary school books used by children, and "deaf" meant too deaf to be taught in a class of hearing children in an elementary school. By section 55, *ibid.*; 7 Halsbury's Statutes 161, "defective" meant incapable by reason of mental or physical defect of receiving proper benefit from the instruction in the ordinary public elementary schools but not (*a*) imbecile, (*b*) merely dull or backward, and (*c*) incapable by reason of the defect of receiving benefit from instruction in such special classes or schools as under Part V of that Act might be provided for defective children. By the same section epileptic children were defined as children, not being idiots or imbeciles, who were unfit by reason of severe epilepsy to attend the ordinary public elementary schools. The terms "idiot" and "imbecile" are defined in section 1 of the Mental Deficiency Act, 1933, as substituted by section 1 of the Mental Deficiency Act, 1927; 11 Halsbury's Statutes 160.

(e) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*.

(f) **"Special schools".**—Section 9 (5), p. 100, *ante*, defines "special schools" as schools which are especially organised for the purpose of providing special educational treatment for pupils requiring such treatment and are approved by the Minister for that purpose. Paragraph (*a*) of section 8 (2), p. 97, *ante*, which requires the local education authority, in fulfilling its duties under the section, to have regard to the need for securing that primary and secondary education are provided in separate schools does not apply to special schools (proviso to section 8 (2), p. 97, *ante*), but the regulations which the Minister may make under sub-section (3) of this section may impose requirements as to the organisation of any special school as a primary school or as a secondary school.

(g) **"Appropriate for that category".**—The Act does not specifically require that special educational treatment of different categories shall be given in separate special schools though, since such schools require the approval of the Minister, he may impose a condition to that effect.

(h) **"In any school".**—It will be noted that if it is not practicable to provide the special education treatment in special schools, the arrangements made by the local education authority may provide for the treatment to be given in any school maintained or assisted by the authority. This does not mean that where, for example, a place in a special school is not available for a particular child, the child may remain in an ordinary class in a county or voluntary school or an assisted school, but that the authority must arrange to provide the special educational treatment in that school. It is, however, a specific duty, imposed by section 8 (2) (*c*), p. 97, *ante* of the authority to have regard, in fulfilling the duty to secure that sufficient schools are available for the area, to the need for securing that provision is made for pupils requiring special educational treatment either in special schools or otherwise and, by section 11 (2) (*e*), p. 103, *ante*, the development plan for the area must give particulars of the arrangements made and proposed to be made by the authority for meeting the needs of pupils who require special educational treatment. Provision is made by section 56, p. 191, *post*, for very special cases in which by reason of extraordinary circumstances a child or young person is unable to attend a suitable primary or secondary school, by enabling the local education authority, with the approval of the Minister, to make arrangements for him to receive such education otherwise than at school.

(i) **"Maintained or assisted".**—By section 114 (1), p. 255, *post*, the words "assist" and "maintain", in relation to any school or county college, are given the meanings assigned to them by section 114 (2), *ibid.*

(k) **"School".**—See the definition of this word in section 114 (1), p. 255, *post*.

(l) **"Prescribed".**—By section 114 (1), p. 255, *post*, this means prescribed by regulations made by the Minister.

(m) **"Primary and secondary education".**—As to the meaning of these terms see sections 114 (1), p. 255, *post*, and 8 (1), p. 97, *ante*.

(n) **"Separate schools".**—See note (o) to section 8, p. 98, *ante*.

(o) **"As a primary school or as a secondary school".**—The terms "primary school" and secondary school are each defined in section 114 (1), p. 255, *post*.

(p) **"Regulations made under this section".**—The sub section does not state whether the regulations relating to religious worship and religious instruction are to be included amongst those which must be made under sub-section (1) or amongst those which may be made under sub-section (3), but since it is provided that they "shall be such as to secure", etc, it would appear they should be included amongst those made under sub-section (1). They would, however, appear to be more appropriate to subsection (3).

(q) **" Religious worship and religious instruction ".**—Since, by section 9 (2), p 100, *ante*, special schools cannot be either county schools or voluntary schools the provisions of the Act relating to religious education in such schools (sections 25–30 inclusive, pp 139 to 147, *ante*) do not apply (except section 30, p 147, *ante*, as to the position of teachers, which, with the exceptions referred to in the section, applies to teachers in " any school or college maintained by the local education authority ") The Minister is, however, empowered to make regulations to secure that, so far as practicable, the pupil and the parent shall have similar opportunities to those available to pupils, and parents of pupils attending county and voluntary schools

(r) **" Withdrawn from attendance ".** –See note (q), *supra* and compare this provision with the provisions applicable to withdrawal contained in section 25 (4), (5) and (7), p 139, *ante*

(s) **" In accordance with the wishes of his parent ".**—See the definition of " parent " in section 114 (1), p 255, *post* This phrase governs not only withdrawal from attendance at religious worship and instruction but also attendance thereat, so that the authority may be required, if the regulations so state, to make arrangements for the giving of various types of religious instruction The Cowper Temple clause as re enacted in section 26, p 142, *ante*, does not apply to special schools established and maintained by the local education authority

34. Duty of local education authorities to ascertain what children require special educational treatment.—(1) It shall be the duty (a) of every local education authority (b) to ascertain (c) what children (d) in their area require special educational treatment (e) and for the purpose of fulfilling that duty any officer of a local education authority authorised in that behalf (f) by the authority may by notice (g) in writing served upon the parent (h) of any child who has attained the age of two years require him to submit the child for examination (i) by a medical officer of the authority (k) for advice as to whether the child is suffering from any disability of mind or body (l) and as to the nature and extent of any such disability (m) , and if a parent upon whom such a notice is served fails without reasonable excuse to comply with the requirement thereof he shall be liable on summary conviction (n) to a fine not exceeding five pounds **[309]**

(2) If the parent of any child who has attained the age of two years requests the local education authority for the area to cause the child to be so medically examined as aforesaid the authority shall comply with the request unless in their opinion the request is unreasonable (o) **[310]**

(3) Before any child is so medically examined as aforesaid, the authority shall cause notice to be given to the parent of the time and place at which the examination will be held and the parent shall be entitled to be present at the examination if he so desires **[311]**

(4) If after considering the advice given with respect to any child by a medical officer in consequence of any such medical examination as aforesaid and any reports or information which the local education authority are able to obtain from teachers or other persons with respect to the ability and aptitude (p) of the child, the authority decide that the child requires special educational treatment, they shall give to the parent notice of their decision and shall provide such treatment for the child **[312]**

(5) The advice given with respect to any child by a medical officer in consequence of any such medical examination as aforesaid shall be communicated to the parent of the child and to the local education authority, and the medical officer by whom the examination was made shall if required by the parent or by the authority so to do, issue to the authority and to the parent a certificate in the prescribed form (q) showing whether the child is suffering from any such disability as aforesaid and if so the nature and extent thereof

Provided that a local education authority shall not require the issue of such a certificate in respect of any child unless the certificate is, in their opinion necessary for the purpose of securing the attendance of the child at a special school in accordance with the provisions of this Act relating to compulsory attendance (r) at primary and secondary schools **[313]**

(6) Any certificate issued under the last foregoing subsection may be cancelled (t) by the Minister or by a medical officer of the local education authority and upon the cancellation of such a certificate the local education authority shall cease to provide special educational treatment for the child with respect to whom the certificate was issued and shall notify the parent accordingly **[314]**

NOTES

The general note to section 33, p. 151, *ante*, refers not only to the provisions of that section but to this also, and should be read in relation to this section.

(a) **"It shall be the duty".**—As to the enforcement of this and other duties imposed by the section, see section 99, p. 237, *post*. In addition, section 68, p. 205, *post*, enables the Minister to prevent a local education authority from exercising its powers or duties unreasonably.

(b) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(c) **"To ascertain".**—The section does not specify how the local education authority is to comply generally with the duty to ascertain what children in its area require special educational treatment, other than by requiring individual children to be submitted to medical examination. Presumably, however, the authority will as a normal practice obtain reports from teachers and/or inspectors and from medical officers, school nurses, etc., upon children who do not appear to be suitable for instruction by normal educational methods. The section does not, however, only apply to children of school age—see note (d), *infra*.

(d) **"Children".**—Section 114 (1), p. 255, *post*, defines "child" as a person who is not over compulsory school age, so that the duty of ascertainment under the section applies to children from birth.

(e) **"Special educational treatment".**—See note (c) to section 33, p. 153, *ante*.

(f) **"Authorised in that behalf".**—The authorisation may be general or may relate to a specific child.

(g) **"Notice".**—As to the service of notices, see section 113, p. 254, *post*.

(h) **"Parent".**—See the definition of this term in section 114 (1), p. 255, *post*.

(i) **"Examination".**—By section 69, p. 205, *post*, the Minister is empowered to make regulations as to the conduct of (*inter alia*) medical examinations for the purposes of the Act. See also note (k), *infra*. A medical examination under this section is not the same as a medical inspection under section 48, p. 179, *post* (see the definition of the latter term in section 114 (1), p. 255, *post*).

(k) **"A medical officer of the authority".**—By section 114 (1), p. 255, *post*, "medical officer" means, in relation to any local education authority, a duly qualified medical practitioner employed or engaged, whether regularly or for the purposes of any particular case, by that authority. The definition is sufficiently wide to enable the authority to require the submission of a child for examination by an ophthalmologist, a pædiatrician or other specialist not in the employment of the authority. By the regulations referred to in note (i), *supra*, which may be made by the Minister under section 69, p. 205, *post*, provision may, in particular, be made requiring that any class of medical examinations made for the purposes of the Act shall be conducted by duly qualified medical practitioners having such special qualifications or experience as may be prescribed, or shall be conducted by a duly qualified medical practitioner selected with the approval of the Minister. In effect, therefore, it would appear that the Minister may compel the authority to appoint or to consult specialists or, alternatively, may require that his approval shall be obtained prior to the appointment of a medical officer.

(l) **"Any disability of mind or body".**—The duty is imposed on the authority by section 8 (2) (*c*), p. 97, *ante*, to secure that special educational treatment is provided for pupils who suffer from any disability of mind or body.

(m) **"Nature and extent of any such disability".**—Upon the nature and extent of the disability depends the decision of the authority as to whether the special educational treatment is to be provided in a special school, if practicable, or in any school maintained or assisted by the authority (section 33 (2), p. 151, *ante*). Where it appears to the authority that any child in its area who has attained the age of two years is suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education at school, the provisions of section 57, p. 192, *post*, apply.

(n) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881; *ibid.* 352. See section 11 of the Act of 1848; 11 Halsbury's Statutes 278, as to the limitation of time for summary proceedings.

(o) **"Unreasonable".**—If the local education authority considers that the request is unreasonable the parent may refer the matter to the Minister who, under section 68, p. 205, *post*, may require the authority to comply with the request if he thinks fit.

(p) **"Ability and aptitude".**—Under section 8, p. 97, *ante*, the local education authority is required to secure that there shall be available sufficient schools for providing primary and secondary education to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities and aptitudes, etc., and the parent of every child of compulsory school age is required by section 36, p. 157, *post*, to cause him to receive efficient full-time education suitable to his age, ability, and aptitude, either by regular attendance at school or otherwise. This section imposes additional duties upon the parents of children requiring special educational treatment, in that the treatment is to be provided by the authority (so that the parent is not entitled to make other arrangements for the child's education) and the authority *may* require any child of two years or more to receive such treatment. The method of securing that advantage is taken of the special educational treatment provided may be found in sections 37–40 inclusive, pp. 158 to 163, *post*.

(q) **"Prescribed form".**—By section 114 (1), p. 255, *post*, "prescribed" means prescribed by regulations made by the Minister. As to the cancellation of such a certificate, see subsection (6) of this section.

(r) **"Compulsory attendance".**—See sections 35–40 inclusive, pp. 155 to 163, *post*.

(s) **"Primary and secondary schools".**—See the definitions of these terms in section 114 (1), p. 255, *post*.

(t) **"Cancelled".**—The manner of cancellation is not specified but it should presumably be in writing.

Compulsory Attendance at Primary and Secondary Schools

35. Compulsory school age.—In this Act the expression "compulsory school age" (a) means any age between five years and fifteen years,

and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five years (b) and has not attained the age of fifteen years and a person shall be deemed to be over compulsory school age as soon as he has attained the age of fifteen years (c) :

Provided that as soon as the Minister is satisfied that it has become practicable to raise to sixteen the upper limit of the compulsory school age, he shall lay before Parliament the draft of an Order in Council directing that the foregoing provisions of this section shall have effect as if for references therein to the age of fifteen years there were substituted references to the age of sixteen years ; and unless either House of Parliament, within the period of forty days (d) beginning with the day on which any such draft as aforesaid is laid before it, resolves that the draft be not presented to His Majesty, His Majesty may by Order in Council direct accordingly.

In reckoning any such period of forty days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [315]

NOTES

Hitherto the law relating to compulsory attendance at school has been contained in Part IV of the Education Act, 1921, *i.e.*, sections 42–50 inclusive ; 7 Halsbury's Statutes 153–158, sections 1–7 of the Education Act, 1936 ; 29 Halsbury's Statutes 118–122, and the Education (Emergency) Act, 1939 ; 32 Halsbury's Statutes 1223.

The whole of the law applying, from 1st April, 1945, to compulsory attendance at primary and secondary schools is now contained in this and the next five sections, section 108 (3), p. 250, *post*, and the Fifth Schedule to this Act, p. 286, *post*.

In the first place this section establishes a compulsory school age of from five to fifteen years of age without any of the exemptions provided for either in sections 2 and 5 of the Education Act, 1936 ; 29 Halsbury's Statutes 119, 121, or in byelaws made under section 46 of the Education Act, 1921 ; 7 Halsbury's Statutes 155. This, however, is subject to a proviso that if the exceptional circumstances of the present time make it impossible to provide the necessary teachers and buildings the Minister may, under section 108 (3), p. 250, *post*, by order retain the leaving age of fourteen for not more than two years after the coming into operation of Part II of the Act on 1st April, 1945. In areas in which bye-laws made under section 46 of the Education Act, 1921 : 7 Halsbury's Statutes 155, have been in operation raising the school-leaving age to fifteen (with exemptions) an order under section 108 (3), *supra*, will actually have the effect of lowering the school-leaving age from fifteen (with exemptions) to fourteen, for a period up to two years from 1st April, 1945.

Ministry of Education Circular 1 (15th August, 1944) advises local education authorities that, in view of the impossibility of securing the necessary teachers and school accommodation by 1st April, 1945, the Minister proposes to make an order under section 108 (3), *supra*, retaining the school-leaving age at fourteen.

" It is not possible at this stage ", the Circular continues, " to say how long the order will remain in force, but authorities may take it that it will not cease to have effect earlier than 1st April, 1946 ".

The intention expressed in the Circular was implemented on 17th August, 1944, by the Compulsory School Age (Postponement) Order, 1944, S.R. & O. 1944 No. 979.

This section also provides for the extension of the school-leaving age to sixteen years by Order in Council as soon as the Minister is satisfied that this is practicable

During the period that the upper limit of compulsory school attendance generally is less than sixteen, the above-mentioned remarks do not apply in the case of children in attendance at special schools where the school-leaving age will continue to be sixteen as it was under section 61 of the Education Act, 1921 ; 7 Halsbury's Statutes 165 (section 38, p. 160, *post*). It should be noted, however, that this provision only applies to children who are registered pupils at special schools and does not apply to children for whom arrangements are made to provide special educational treatment at other schools maintained or assisted by the local education authority though, under the previous law, the higher leaving age applied to all blind, deaf, defective and epileptic children for whom the authority was required to make provision under Part V of the Education Act, 1921 ; 7 Halsbury's Statutes 159.

Under the law in operation prior to 1st April, 1945, it was the duty of the parent of every child of school age to cause his child to receive efficient elementary instruction in reading, writing and arithmetic (Education Act, 1921, section 42) ; 7 Halsbury's Statutes 153, and his duty went further in the case of blind, deaf, defective and epileptic children (*ibid.*, sections 51 and 53 ; 7 Halsbury's Statutes 159, 160. Attendance at school was normally enforced by byelaws which each local education authority was required to make for its area (*ibid.*, section 46 ; 7 Halsbury's Statutes 155), and, in individual cases, school attendance orders (*ibid.*, sections 43 and 44 . 7 Halsbury's Statutes 153, 154. From 1st April, 1945, under section 36, p. 157, *post*, it is the duty of the parent of every child to cause him to receive efficient full-time education suitable to his age, ability and aptitude either by regular attendance at school or otherwise. Since the obligation to attend school has now been imposed specifically by this section, school attendance byelaws are no longer necessary and no provision is made in the Act either for the making of further byelaws or for the continuance of those previously in force All school attendance byelaws automatically cease to have any effect on and after 1st April, 1945.

Section 80, p. 218, *post*, requires the proprietor of every school (in the case of a county school or voluntary school the managers or governors) from 1st April, 1945, to cause to be kept in accordance with regulations made by the Minister a register containing the prescribed particulars of all persons of compulsory school age who are pupils at the school. Section 39, p. 161, *post*, requires the parent of every child of compulsory school age who is a registered pupil at a school to cause the child to attend regularly. Where a parent fails to satisfy the local education

authority that he is discharging the duty imposed on him by section 36, p. 157, *post*, and referred to above, the authority must serve upon him a school attendance order requiring him to send his child to a specified school (section 37, p. 158, *post*). The parent is, where practicable to be given an opportunity of choosing the school to be named in the order and may at any time apply for the order to be revoked because other arrangements have been made for the child to receive the necessary instruction, or for another school to be substituted for the school named in the order (section 37 (4), *supra*) If the authority is of opinion that the parent's choice of school is unsuitable, the Minister is to determine the matter (section 37 (3), *supra*).

Heavier penalties than existed under the previous law are imposed by section 40 (1), p. 163, *post*, for non-compliance with a school attendance order or for failure to send a child regularly to the school at which he is registered.

Replacing section 50 of the Education Act, 1921 ; 7 Halsbury's Statutes 158, section 39 (3), p. 161, *post*, makes special provision for canal boat children and other children whose parents' trades or businesses require them to travel from place to place.

(a) **" Compulsory school age ".**—By section 114 (1), p 255, *post*, " compulsory school age " has, subject to the provisions of section 38, p. 160, *post*, the meaning assigned to it by this section.

In addition to the special provision made in section 38, *supra*, as regards persons who are registered pupils at special schools, this section has effect subject to the following provisions—

(*a*) By section 108 (3), p 250, *post*, if the Minister is satisfied that it is necessary to make an order under that subsection by reason of time being required after the commencement of Part II of the Act (1st April, 1945) for enabling adequate provision to be made for a supply of teachers or of school accommodation sufficient to meet the needs of children between the ages of fourteen and fifteen years, he may by order direct (*inter alia*) that, whilst the order remains in force, this section shall have effect as if for references therein to fifteen, there were substituted references to fourteen. By a proviso any such order is to cease to have effect at the expiration of two years from 1st April, 1945, if it is then still in operation. Being in Part V of the Act the power given by the subsection came into operation immediately for the passing of the Act (section 119, p. 267, *post*). See the general note, *supra*, as to the Minister's intention in relation to this matter.

(*b*) By section 114 (5), p. 258, *post*, for the purposes of the Act a person in attendance at a school or county college who attains any age during the term of the school or college shall be deemed not to have attained that age until the end of the term. This replaces section 138 (1) of the Education Act, 1921 ; 7 Halsbury's Statutes 202, which, however, not only applied to children attending school but to those about to attend, so that the obligation to send a child to school at the age of five did not in fact come into operation until the beginning of the next school term.

(*c*) By section 114 (6), p. 258, *post*, any person who before 1st April, 1945, attained an age at which his parent ceased to be under any obligation imposed by section 46 of the Education Act, 1921 ; 7 Halsbury's Statutes 155, shall be deemed to be over compulsory school age and any person who, after that date, ceases to be of compulsory school age shall not, in the event of any subsequent change in the upper limit of the compulsory school age, again become a person of compulsory school age.

(*b*) **" If he has attained the age of five years ".**—Though a child does not become of compulsory school age until he attains the age of five years, the local education authority is required, in the course of securing that sufficient schools are available for providing primary and secondary education, to have regard to the need for securing that provision is made for pupils who have not attained the age of five years, in nursery schools or nursery classes (section 8) (2) (*b*), p. 97, *ante*). The lower age limit for which provision is to be made is two years (section 9 (4), p. 100, *ante*).

(c) **" As soon as he has attained the age of fifteen years ".**—As to the provision of further education for persons over compulsory school age, see sections 41–47, pp. 164 to 178, *post*.

(d) **" Within the period of forty days ".**—See section 112, p. 254, *post*.

36. Duty of parents to secure the education of their children.—It shall be the duty (a) of the parent (b) of every child (c) of compulsory school age (d) to cause him to receive efficient full-time education (e) suitable to his age, ability, and aptitude (f), either by regular attendance (g) at school (h) or otherwise (i). **[316]**

NOTES

The general note to section 35, p 139, *ante*, refers to the previous and the new law regarding school attendance.

(a) **" Duty ".**—As to the action which is to be taken by the local education authority if it appears that the parent is failing to perform this duty, see section 32, p 150, *post*.

(b) **" Parent ".**—By section 114 (1), p 255, *post*, this word, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(c) **" Child ".**—By section 114 (1), p. 255, *post*, " child " means a person who is not over compulsory school age.

(d) **" Compulsory school age ".**—See sections 35, p. 155, *ante*, and 38, p. 160, *post*, and particularly note (a) to the former section.

(e) **" Full-time education ".**—This term is not defined in the Act.

(f) **" Suitable to his age, ability and aptitude ".**—The White Paper on Educational Reconstruction (Cmd. 6458 of 1943) stated, at pp. 5 and 8 :—

" Among the major anachronisms of the existing law is section 42 of the Education Act, 1921, which defines the duty of a parent to secure the education of his child in these terms :—

' It shall be the duty of the parent of every child between the ages of 5 and 14 . . . to cause that child to receive efficient elementary instruction in reading, writing and arithmetic '.

This looks back to the times when all that was demanded or provided was a strictly ' elementary ' education in the three R's designed to secure a minimum of literacy. It has long been an abuse

of language to apply the term ' elementary ', which may have been appropriate enough 70 years ago when it connoted an education that could be terminated in the case of an intelligent child at the age of *10*, to the education given in a school in which *all* pupils remain *until the age of 14*. Indeed it is now generally accepted that 14 is too early, in the conditions of modern life, for full-time schooling to cease, as it does at present for some 90 per cent. of the children.

. . . *The parent's duty will no longer be confined to causing his child to be efficiently* instructed in the three R's, his duty will be to cause his child to receive efficient full-time education suitable to the child's age and aptitudes "

The duty imposed by this section is thus very much wider than was the former duty under the Education Act, 1921, and the task of the local education authority is determining for the purposes of section 37, p 158, *post*, whether the duty is being fulfilled will be so much more difficult See, in particular, note (n) to section 8, p 97, *ante*, and the notes there referred to

(g) **" By regular attendance ".**– See section 39 (2), p 161, *post*, and particularly note (e) to that section The only specific indication as to what may in particular circumstances constitute regular attendance is contained in the proviso to section 39 (3), *supra*, which only applies to certain children having no fixed abode.

(h) **" At school ".**—The term " school " is defined in section 114 (1), p 255, *post*, as an institution for providing primary or secondary education or both primary and secondary education being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school; and the expression, where used without qualification, includes any such school or all such schools as the *context may require It would appear that the parent's duty under this section* is discharged as soon as he causes his child to receive full-time education by regular attendance at a school, irrespective of the efficiency and suitability of the education provided By reason of his powers and duties under the Act the Minister is able to ensure that efficient and suitable education is provided at schools maintained by the local education authority and at schools in respect of which he makes grants to the proprietor In the event of the education provided at an independent school being inefficient or unsuitable, having regard to the age and sex of the child, it becomes the duty of the Minister to take action under section 71, p 208, *post* (see note (c) to that section) This view is confirmed by section 37 (2), p 158, *post*, under which, if a parent fails to satisfy the local education authority that a child is receiving efficient full-time education suitable to his age, ability and aptitude, the authority may require the parent to cause the child *to attend school.*

(i) **" Or otherwise ".**—It will be necessary for the local education authority to examine more closely than hitherto cases where a parent attempts to fulfil his duty under this section by providing *efficient full-time education otherwise than at school—see section 37, p. 158, post* The following cases decided under the previous law may be of value :—

(1) *R.* v. *Walton, etc., Justices, Ex parte Dutton* (1911), 75 J.P. 558, 33 Digest 334, *461* (admissibility of evidence as to state of child's education),

(2) *Bevan* v *Shears* [1911] 2 K.B 936; 19 Digest 568, *88* (efficiency of education provided),

(3) *R.* v *West Riding of Yorks. Justices* [1910] 2 K.B 192; 19 Digest 567, *87* (efficiency of alternative education),

(4) *Osborne* v. *Martin* (1927), 91 J P. 197; Digest Supp. (withdrawal from school for piano lessons)

If by reason of extraordinary circumstances a child or young person is unable to attend a suitable primary or secondary school, the local education authority may, with the approval of the Minister, make special arrangements for him to receive such education otherwise than at school (section 56, p 191, *post*).

37. School attendance orders.—(1) If it appears to a local education authority (a) that the parent (b) of any child (c) of compulsory school age (d) in their area is failing to perform the duty imposed on him by the last foregoing section (e), it shall be the duty (f) of the authority to serve upon the parent a notice (g) requiring him, within such time as may be specified in the notice not being less than fourteen days from the service thereof, to satisfy the authority that the child is receiving efficient full-time education (h) suitable to his age, ability, and aptitude (i) either by regular attendance (k) at school (l) or otherwise (m). [317]

(2) If after such a notice has been served upon a parent by a local education authority the parent fails to satisfy the authority in accordance with the requirements of the notice that the child to whom the notice relates is receiving efficient full-time education suitable to his age, ability, and aptitude, then, if in the opinion of the authority it is expedient that he should attend school, the authority shall serve (n) upon the parent an order (o) in the prescribed form (p) (hereinafter referred to as a " school attendance order ") (q) requiring him to cause the child to become a registered pupil (r) at a school named in the order

Provided that before serving such an order upon a parent the authority shall, where practicable (s), afford him an opportunity of selecting the school to be named in the order, and, if a school is selected by him that school shall, unless the Minister otherwise directs (t), be the school named in the order. [318]

(3) If the local education authority are of opinion that the school selected by the parent as the school to be named in a school attendance

order is unsuitable to the age, ability or aptitude of the child with respect to whom the order is to be made, or that the attendance of the child at the school so selected would involve unreasonable expense to the authority, the authority may, after giving to the parent notice of their intention to do so, apply to the Minister for a direction determining what school is to be named in the order [319]

(4) If at any time while a school attendance order is in force with respect to any child the parent of the child makes application to the local education authority by whom the order was made requesting that another school be substituted for that named in the order, or requesting that the order be revoked on the ground that arrangements have been made for the child to receive efficient full-time education suitable to his age, ability, and aptitude otherwise than at school, the authority shall amend or revoke the order in compliance with the request unless they are of opinion that the proposed change of school is unreasonable or inexpedient in the interests of the child, or that no satisfactory arrangements have been made for the education of the child otherwise than at school, as the case may be, and if a parent is aggrieved by a refusal of the authority to comply with any such request, he may refer the question to the Minister who shall give such direction thereon as he thinks fit [320]

(5) If any person upon whom a school attendance order is served fails to comply with the requirements of the order he shall be guilty of an offence against this section (u) unless he proves (x) that he is causing the child to receive efficient full-time education suitable to his age, ability, and aptitude otherwise than at school [321]

(6) If in proceedings against any person for a failure to comply with a school attendance order that person is acquitted, the court may direct that the school attendance order shall cease to be in force, but without prejudice to the duty of the local education authority to take further action under this section (y) if at any time the authority are of opinion that having regard to any change of circumstances it is expedient so to do [322]

(7) Save as provided by the last foregoing subsection, a school attendance order made with respect to any child shall, subject to any amendment thereof (z) which may be made by the local education authority, continue in force so long as he is of compulsory school age unless revoked by that authority [323]

NOTES

The previous law and the provisions in this Act which replace it are discussed in the general note to section 35, p 155, *ante*

(a) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267 *post*

(b) **"Parent"**.—By section 114 (1), p 255 *post*, this word, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(c) **"Child"**.—By section 114 (1), p 255, *post*, "child" means a person who is not over compulsory school age

(d) **"Compulsory school age"**.—See sections 35, p 155, *ante*, and 38, p 160, *post*, and particularly note (a) to the former section

(e) **"Duty imposed on him by the last foregoing section"**.—See section 36, p 157, *ante*, and particularly notes (f), (g) (h) and (i) thereto

(f) **"It shall be the duty"**.—Under section 68, p 205, *post*, the Minister may take steps to prevent the unreasonable exercise of this duty

(g) **"Notice"**.—As to the service of notices, see section 114, p 254, *post*

(h) **"Full-time education"**.—This term is nowhere defined in the Act

(i) **"Suitable to his age, ability and aptitude"**.—See note (f) to section 36, p 157, *ante*

(k) **"By regular attendance"**.—See note (e) to section 36, p 157, *ante*, and note (g) to section 49, p 162, *post*

(l) **"At school"**.—See note (h) to section 36, p 157, *ante*

(m) **"Or otherwise"**.—See note (i) to section 36, p 157, *ante*

(n) **"The authority shall serve"**.—Although the duty envisaged by this sub section is contingent upon the opinion of the authority, if the Minister considers the circumstances require the service of a school attendance order he may compel the authority accordingly (section 68 p 205, *post*)

(o) **"An order"**.—As to the revocation or variation of such an order, see section 111, p 254, *post*, but see also sub-section (4) of this section If not previously revoked the order will cease to have effect when the child ceases to be of compulsory school age (sub section (7) of this section)

(p) **" In the prescribed form ".**—By section 114 (1), p. 255, *post*, " prescribed " means prescribed by regulations made by the Minister.

(q) **" School attendance order ".**—A school attendance order made under this Act differs from the equivalent provision in the previous law (Education Act, 1921, section 44 ; 7 Halsbury's Statutes 154) in that the order is made by the local education authority and no reference is necessary to a court of summary jurisdiction.

(r) **" Registered pupil ".**—By section 114 (1), p. 255, *post*, the term means in relation to any school a pupil registered as such in the register kept in accordance with the requirements of the Act, but does not include any child who has been withdrawn from the school in the prescribed manner. As to the registration of pupils at schools, see section 80, p. 218, *post*.

(s) **" Where practicable ".**—Under section 44 of the Education Act, 1921 ; 7 Halsbury's Statutes 154, the parent of a child was entitled to select " some certified efficient school willing to receive him ". Presumably the present words refer (*inter alia*) to availability of accommodation in a particular school and to the necessary absence of choice in a " single-school area ". Furthermore, it might be impracticable to give any choice to the parent where the authority had decided, under section 34, p. 154, *ante*, that the child required special educational treatment.

(t) **" Unless the Minister otherwise directs ".**—As to the revocation or variation of such a direction, see section 111, p. 254, *post*. If a choice of schools is " practicable " but for any reason the authority thinks the parent's choice should not be accepted, the authority should refer the matter to the Minister for his direction (sub-section (3) of this section). As to directions by the Minister under sub-sections (3) and (4) of this section regarding the attendance of children at a special school, see section 38 (3), p. 160, *post*.

(u) **" An offence against this section ".**—As to proceedings and penalties in respect of such an offence, see section 40, p. 163, *post*.

(x) **" Unless he proves ".**—It would appear that, if the school attendance order was duly made and served, it is no defence to prove that the child is receiving efficient full-time education at some school other than that named in the order.

(y) **" Further action under this section ".**—It would appear from this sub-section that, even though the opinion of the authority may differ from the decision of the court, a direction under this sub-section absolves the authority from the duty to take any further action unless there is a change of circumstances.

(z) **" Subject to any amendment thereof ".**—An amendment of a school attendance order may become necessary not only as a result of a request made by the parent under sub-section (4), but because, for example, the child reaches an age at which it becomes necessary to transfer him to another school, or because of reorganisation or the establishment of a new school.

38. Additional provisions as to compulsory attendance at special schools.—(1) While the upper limit of the compulsory school age (a) is, in relation to other children (b), less than sixteen, a person who is a registered pupil (c) at a special school (d) shall nevertheless be deemed to be of compulsory school age until he attains the age of sixteen years (e) and shall not be deemed to be over compulsory school age until he has attained that age. [324]

(2) A child who has under arrangements made by a local education authority (f) become a registered pupil at a special school shall not be withdrawn from the school without the consent of that authority ; but if the parent (g) of any such child is aggrieved by a refusal of the authority to comply with an application made by the parent requesting such consent, he may refer the question to the Minister who shall give such direction (h) thereon as he thinks fit. [325]

(3) No direction given by the Minister under the last foregoing subsection or under subsection (3) or subsection (4) of the last foregoing section (i) shall be such as to require a pupil (k) to be a registered pupil at a special school unless either the parent consents (l) to his attending such a school or there is in force a certificate (m) issued by a medical officer (n) of the local education authority showing that the child is suffering from some disability of mind or body of such a nature and extent that, in the opinion of the Minister, it is expedient that the child should attend a special school (o). [326]

NOTES

The provisions of the Act relating to compulsory school attendance are discussed in the general note to section 35, p. 155, *ante*, and the education of pupils requiring special educational treatment in the general note to section 33, p. 151, *ante*.

(a) **" Compulsory school age ".**—See section 35, p. 155, *ante*, and particularly note (a) to that section.

(b) **" Other children ".**—By section 114 (1), p. 255, *post*, " child " means a person who is not over compulsory school age.

(c) **" Registered pupil ".**—See note (r) to section 37, p. 160, *ante*.

(d) **" Special school ".**—See note (t) to section 33, p. 153, *ante*.

(e) **" Attains the age of sixteen years ".**—By section 114 (5), p. 258, *post*, a person in attendance at a school who attains any age during the term of the school shall be deemed not to have attained that age until the end of the term.

(f) **"Local education authority".**—See section 6, p 87, *ante* and the First Schedule p 271, *post* In this instance the term will denote the local education authority in whose area the child is living at the time the arrangements are made and not the authority for the area in which the school happens to be situate As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(g) **"Parent"**.—By section 114 (1), p 255, *post*, this word, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(h) **"Direction".**—As to the revocation or variation of such a direction, see section 111, p 254, *post*

(i) **"The last foregoing section"** —See section 37, p 158 *ante*, and particularly note (t) thereto

(k) **"Pupil"** —By section 114 (1), p 255, *post*, this word, where used without qualification means a person of any age for whom education is required to be provided under the Act

(l) **"Unless . the parent consents"** —No form or method of consent is specified by the section but it will, for obvious reasons, be desirable that any such consents should be in writing

(m) **"A certificate"** —See section 34 (5), p 154, *ante*

(n) **"A medical officer"** —See note (k) to section 34, p 155, *ante*

(o) **"The child should attend a special school".**—See section 34 (2), p 154, *ante*, and the regulations to be made by the Minister under sub section (1) of that section

39. Duty of parents to secure regular attendance of registered pupils.—(1) If any child (a) of compulsory school age (b) who is a registered pupil (c) at a school (d) fails to attend regularly (e) thereat the parent (f) of the child shall be guilty of an offence against this section (g) **[327]**

(2) In any proceedings for an offence against this section in respect of a child who is not a boarder (h) at the school at which he is a registered pupil, he child shall not be deemed to have failed (i) to attend regularly at the chool by reason of his absence therefrom with leave (k) or—

(*a*) at any time when he was prevented from attending by reason of sickness or any unavoidable cause ,

(*b*) on any day exclusively set apart for religious observance by the religious body to which his parent belongs ,

(*c*) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child s home, and that no suitable arrangements have been made by the local education authority for his transport (l) to and from the school or for boarding accommodation (m) for him at or near the school or for enabling him to become a registered pupil at a school nearer to his home **[328]**

(3) Where in any proceedings for an offence against this section it is proved that the child has no fixed abode (n), paragraph (*c*) of the last foregoing subsection shall not apply, but if the parent proves that he is engaged in any trade or business of such a nature as to require him to travel from place to place and that the child has attended at a school at which he was a registered pupil as regularly as the nature of the trade or business of the parent permits, the parent shall be acquitted

Provided that, in the case of a child who has attained the age of six years the parent shall not be entitled to be acquitted under this subsection unless he proves that the child has made at least two hundred attendances during the period of twelve months ending with the date on which the proceedings were instituted **[329]**

(4) In any proceedings for an offence against this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be deemed to have failed to attend regularly at the school if he is absent therefrom without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause **[330]**

(5) In this section the expression "leave" in relation to any school means leave granted by any person authorised in that behalf by the managers, governors or proprietor (o) of the school, and the expression "walking distance" means, in relation to a child who has not attained the age of eight years (p) two miles, and in the case of any other child three miles, measured by the nearest available route. **[331]**

NOTES

As to compulsory school attendance generally, see the general note to section 35, p. 155, *ante*

(a) **" Child ".**—This word is defined by section 114 (1), p. 255, *post*, as a person who is not over compulsory school age.

(b) **" Compulsory school age ".**—See section 35, p. 155, *ante*, and particularly note (a) to that section.

(c) **" Registered pupil ".**—See note (r) to section 37, p. 160, *ante*.

(d) **" School ".**—By section 114 (1), p. 255, *post*, the word means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school; and the expression where used without qualification includes any such school or all such schools as the context may require.

(e) **" Fails to attend regularly ".**—The question as to what constitutes regular attendance is, subject to the excuses mentioned in sub-section (2) of this section, one of fact for the justices to decide, though in the case of certain children a qualification is introduced by sub-section (3) of this section. Section 46 (2) of the Education Act, 1921; 7 Halsbury's Statutes 155, required the parents of children compulsorily liable to attend school to cause them to attend (unless there was some reasonable excuse) at such times as might be determined by the byelaws. No such provision regarding times of attendance is made by this Act, although section 23, p. 134, *ante*, enables the local education authority, in the case of every county and voluntary school except an aided secondary school, and the governors in the case of an aided secondary school to determine the times at which the school session shall begin and end, and the school holidays. It is reasonable to assume that frequent lateness of a child will constitute an offence under this section

It has been decided under the previous law (in *Hunter* v. *Johnson* (1884), 13 Q.B.D. 225; 19 Digest 600, *287*) that detention after school hours is unlawful.

An additional defence to those enumerated in this section is given by section 54, p. 188, *post*, in certain circumstances to pupils who have been excluded from school under that section.

(f) **" Parent ".**—By section 114 (1), p. 255, *post*, this word, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(g) **" An offence against this section ".**—As to proceedings and penalties in respect of such an offence, see section 40, p. 163, *post*.

(h) **" A boarder ".**—As to the duty of securing the provision of boarding accommodation, see sections 8 (2) (*d*), p. 97, *ante*, and 50, p. 184, *post*. A child for whom boarding accommodation is provided under section 50, *supra*, is presumably not a boarder under this sub-section.

(i) **" Shall not be deemed to have failed ".**—Under section 46 of the Education Act, 1921, 7 Halsbury's Statutes 155, the existence of " some reasonable excuse " was a defence to proceedings under the byelaws. Section 49, *ibid.*; 7 Halsbury's Statutes 157, listed certain reasons which were to constitute a reasonable excuse, namely :—

(*a*) that the child had been prevented from attending school by sickness or any avoidable cause (re-enacted in sub-section (2) (*a*) of this section);

(*b*) that there was no public elementary school open which the child could attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of the child, as the byelaws might prescribe (subject, however, to a proviso in cases where transport was provided by the local education authority) (compare sub-section (2) (*c*) and the definition of " walking distance in subsection (5) of this section);

(*c*) in the case of non-compliance with a byelaw requiring a parent to cause his child to attend school, that the child was under efficient instruction in some other manner (see section 37 (5), p. 159, *ante*).

Furthermore, by section 46 (4) of the Education Act, 1921; 7 Halsbury's Statutes 155, byelaws under that Act :—

(*a*) were not to prevent the withdrawal of any child from any religious observance or instruction in religious subjects (see sections 26 and 33 (4), pp. 142 and 151, *ante*);

(*b*) were not to require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belonged (re-enacted in sub-section (2) (*b*) of this section); and

(*c*) might provide that parents should not be required to cause their children to attend school or to receive efficient elementary instruction in reading, writing and arithmetic before the age of six (not re-enacted).

The following cases decided under the previous law may still be relevant under the present Act :—

(1) *London County Council* v. *Hearn* (1909), 73 J.P. 211; 19 Digest 564, *61* (the truancy of the child is no defence to proceedings against the parent);

(2) *Belper School Attendance Committee* v. *Bailey* (1882), 9 Q.B.D. 259; 19 Digest 565, *75*; *London School Board* v. *Duggan* (1884), 13 Q.B.D. 176; 19 Digest 566, *78*; *Hewett* v. *Thompson* (1889), 55 J.P. 103; 19 Digest 566, *76*; *Rednall* v. *Beamish* (1926), 90 J.P. 153; Digest Supp.; *London County Council* v. *Maher* [1929] 2 K.B. 97; Digest Supp. (as to whether the reasonable excuses given in section 49 of the 1921 Act; 7 Halsbury's Statutes 157, were exhaustive);

(3) *Hares* v. *Curtin* [1913] 2 K.B. 328; 19 Digest 568, *89* (meaning of the term " nearest road ");

(4) *Walker* v. *Cummings* (1912), 76 J.P. 375; 19 Digest 567, *83* (exclusion of verminous child not a reasonable excuse;

(5) *Symes* v. *Brown* (1913), 77 J.P. 345; 19 Digest 567, *91* (presence of infection at school);

(6) *Bowen* v. *Hodgson* (1923), 87 J.P. 186; 19 Digest 568, *92* (risk of infection);

(7) *Isle of Wight County Council* v. *Holland* (1909), 73 J.P. 507; 19 Digest 567, *86* (child attending school other than that named in attendance order).

(k) **" With leave ".**—As to the meaning of " leave ", see sub-section (5) of this section.

(l) **" Transport ".**—As to the provision of transport and other facilities by a local education authority, see section 55, p. 190, *post*.

(m) **" Boarding accommodation ".**—See note (h), *supra*.

(n) **" No fixed abode ".**—This sub-section replaces section 50 of the Education Act, 1921 ; 7 Halsbury's Statutes 158, which applied to children in canal boats. It is of much wider application than that section.

(o) **" Managers, governors or proprietor ".**—As to the meaning of " managers " and " governors ", see note (d) to section 17, p. 123, *ante*. " Proprietor ", in relation to a school, is defined in section 114 (1), p. 255, *post*.

(p) **" Has not attained the age of eight years ".**—As to the time at which any particular age is attained, see section 114 (5), p 258, *post*.

40. Enforcement of school attendance.—(1) Subject to the provisions of this section, any person guilty of an offence against section thirty-seven or section thirty-nine of this Act (a) shall be liable (b) on summary conviction (c), in the case of a first offence against that section to a fine not exceeding one pound, in the case of a second offence against that section to a fine not exceeding five pounds, and in the case of a third or subsequent offence against that section to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment. [332]

(2) It shall be the duty (d) of the local education authority (e) to institute proceedings for such offences as aforesaid wherever, in their opinion, the institution of such proceedings is necessary for the purpose of enforcing the duty (f) imposed upon a parent (g) by this Act to cause his child (h) to receive efficient full-time education (i) suitable to his age, ability, and aptitude (k), and no such proceedings shall be instituted except by or on behalf of a local education authority (l). [333]

(3) Where the court before which a prosecution is brought for an offence against the last foregoing section is satisfied that the child in respect of whom the offence is alleged to have been committed has failed to attend regularly at the school (m) at which he is a registered pupil, then, whether or not the parent is convicted, the court may direct that the child be brought before a juvenile court by the authority by whom or on whose behalf the proceedings are instituted, and the juvenile court may, if it is satisfied that it is necessary so to do for the purpose of securing the regular attendance of the child at a school, make any order which such a court has power to make under section sixty-two of the Children and Young Persons Act, 1933, in the case of children and young persons in need of care or protection who are brought before it under that section. [334]

(4) Where proceedings have been instituted for an offence against the last foregoing section alleged to have been committed in respect of any child and it appears to the officer by whom the proceedings were instituted on behalf of the local education authority that there is reasonable cause to believe that the punishment of the parent would not be sufficient for the purpose of securing the regular attendance of the child at school, it shall be his duty to apply to the court for a direction under the last foregoing subsection ; and where application is so made such a direction shall be given unless the court is satisfied that no direction is necessary for the purpose aforesaid. [335]

(5) For the purpose of the Children and Young Persons Act, 1933, any child with respect to whom a direction has been given under this section that he be brought before a juvenile court shall be deemed to be a child about to be brought, or brought, before such a court under section sixty-two of that Act and any order made by a juvenile court under this section shall be deemed to be an order made under that section, and all the provisions of that Act shall have effect accordingly, but subject to the modification that in relation to any such child subsection (1) of section sixty-seven of the said Act shall have effect as if the words " a constable, or " were omitted therefrom. [336]

NOTES

This section replaces sections 45 (as substituted by section 60 and the Third Schedule to the Children and Young Persons Act, 1933 ; 26 Halsbury's Statutes 207, 245) and 46 (5) of the Education Act, 1921 ; 7 Halsbury's Statutes 156. The previous law relating to school attendance and the provisions of the present Act relating thereto are discussed in the general note to section 35, p. 155, *ante*.

(a) **" Offence against section thirty-seven or section thirty-nine of this Act ".**—Section 37, p 158, *ante*, relates to school attendance orders, and section 39, p 161, *ante*, to the duty of parents to secure the regular attendance at school of registered pupils

(b) **" Shall be liable "** —Greater penalties are imposed by the present Act Under sections 45 (as substituted by the Children and Young Persons Act, 1933, Schedule 3, 26 Halsbury's Statutes 245) and 46 (5) of the Education Act, 1921, 7 Halsbury's Statutes 156, the maximum pecuniary penalties were twenty shillings including the costs

(c) **" On summary conviction ".**—*The Summary Jurisdiction Acts* are those of 1848, 1879, 1884, 1899, 11 Halsbury's Statutes 270, 323, 355, 363 and the Summary Jurisdiction (Process) Act, 1881, *ibid* 352 See section 11 of the Act of 1848, *ibid* 276 as to the limitation of time for summary proceedings

(d) **" Duty "** (of the local education authority) —Although the duty envisaged by this subsection is contingent upon the opinion of the authority, if the Minister considers that the authority has acted or proposes to act, unreasonably, he may give such directions under section 68, p 205 *post*, as he thinks fit

(e) **" Local education authority ".**—See section 6, p 87, *ante* and the First Schedule p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267 *post*

(f) **" Duty " (of the parent).**—See section 36, p 157, *ante*

(g) **" Parent "** —The term is defined by section 114 (1), p 255, *post*, in relation to any child, as including a guardian and every person who has the actual custody of the child

(h) **" Child "** —This word is defined by section 114 (1), p 255, *post*, as a person who is not over compulsory school age

(i) **" Full-time education ".**—This term is not defined in the Act

(k) **" Suitable to his age, ability and aptitude ".**—See note (f) to section 36, p 157, *ante*

(l) **" Except by or on behalf of a local education authority "** —This is a variation of the previous law—see *Walker* v *Laxton* (1894), 70 L T 690, 19 Digest 577, *132*

(m) **" Section sixty-two of the Children and Young Persons Act, 1933 ".**—Under section 62 of the 1933 Act, 26 Halsbury's Statutes 208, a juvenile court may in relation to a child or young person in need of care and protection, either—

(*a*) order him to be sent to an approved school or

(*b*) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him, or

(*c*) order his parent or guardian to enter into recognisance to exercise proper care and guardianship, or

(*d*) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a special period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court

FURTHER EDUCATION

41. General duties of local education authorities with respect to further education.—Subject as hereinafter provided (a), it shall be the duty of every local education authority (b) to secure the provision for their area of adequate facilities (c) for further education (d) that is to say —

(*a*) full time and part time education (e) for persons over compulsory school age (f), and

(*b*) leisure-time occupation (g) in such organized cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose

Provided that the provisions of this section shall not empower or require local education authorities to secure the provision of facilities for further education otherwise than in accordance with schemes of further education (h) or at county colleges (i) **[337]**

NOTES

This and the next six succeeding sections relate to further education and the following general note discusses these provisions as a whole

The previous law relating to the matters now dealt with under the generic heading of " further education " have been drawn from various parts of the Education Act, 1921, which, as regards continuation schools, was a re enactment of part of the " Fisher " Act—the Education Act, 1918

In the first place, the term ' higher education ", as used in the Education Act, 1921, meant any form of education other than elementary education (section 170 (3), *ibid*, 7 Halsbury's Statutes 213), so that the power given by section 70 of that Act to the local education authority for higher education and, to a limited extent, to the council of any non county borough or urban district, to supply or aid the supply of higher education did not relate only to the form of education which has become known as secondary education but to other forms as well Under section 71 of the Education Act, 1921, 7 Halsbury's Statutes 168 the power to supply or aid the supply of higher education included—

(*a*) the power to train teachers and to supply or aid the supply of education other than elementary,

(*b*) the power to make provision outside the authority's area,

(*c*) the power to provide or assist in providing scholarships and maintenance allowances for, and to pay or assist in paying the fees of, students at schools, colleges or hostels within or without that area

Power to aid educational research was also given by section 74, *ibid*; 7 Halsbury's Statutes 170.

In addition, re-enacting provisions of the Education Act, 1918, Part II of the Education Act, 1921, provided for the preparation and submission to the Board of Education of schemes for the development and comprehensive organisation of education (section 11, *ibid.*, 7 Halsbury's Statutes 135), and, in particular, local education authorities for higher education were empowered, and might be required, to submit schemes for the progressive organisation of a system of day continuation schools (section 13, *ibid.*; 7 Halsbury's Statutes 136). The principles embodied in this plan were contained in sections 75 to 79 of the Education Act, 1921, 7 Halsbury's Statutes 170–174, which provided for the compulsory attendance, from the "appointed day", at such schools of young persons under 18 years of age for 320 hours in each year. The appointed day was, however, fixed for only nine areas and for various reasons failed in each of those areas except one (Rugby), which has afforded an excellent example of pioneering effort.

The White Paper on Educational Reconstruction (Cmd. 6458 of 1943, at pp 18–24) referred in some detail to the Government proposals which have been embodied in the present Act, under the heading of "Further Education" and "The Youth Service". These references, in which "county college" should be read for "young people's college", are as follows:—

"FURTHER EDUCATION

A COMPULSORY PART-TIME EDUCATION

63. It is a common criticism of our present full-time education which for most children ceases at about the age of fourteen, that its effects are thin and liable to wear off quickly once the child has left school for work. The reason for this is not difficult to see; to borrow the language of photography, the process of education for the vast majority of children offers at present an example of 'under-exposure, under-development and insufficient fixing'.

64. As things now stand, the great mass of pupils leaving the elementary schools do not pursue any formal education and much of the work of the schools inevitably runs to waste. When every allowance has been made for those—possible one in six of young persons aged fifteen to eighteen—who of their own initiative attend evening institutes or technical schools, and for those who may be associated with one of the various voluntary organisations which provide a training for adolescents through their social and recreative interests in their leisure hours, it remains true to say that, in the normal course, hundreds of thousands of boys and girls are left without the supervision and help that they need during the most critical years in the formation of character and the training of mind and body.

65. Something will be done to remedy the defect of 'under-exposure' by the extension of school life to fifteen; but this extension, and even the further extension to sixteen, will not give full value unless steps are taken to consolidate the results. The continued supervision of the health of young people after their full time schooling has ceased, and the encouragement and the provision of opportunity to develop their capacities and their interests, are alike essential if the best is to be made of the nation's youth. There is common agreement that had the provisions for day continuation schools of the Act of 1918 been operated, many of the problems of the adolescent would largely have been solved.

66. From the point of view of the country's manufacturing industry, agriculture and commerce, the training afforded by a system of part-time education in conjunction with employment is long overdue. The initial and natural advantages that gave this country, almost for the asking, its place of pre-eminence in world manufacture and world markets have long been fading. More and more in the future will it be necessary to rely on the capacity, adaptability and the quality, of our industrial and commercial personnel. Had fuller attention been given earlier to the all-important question of the training of young workers, some of the difficulties experienced by the services and by industry during the present war would have been markedly less acute.

67. The principles of the Act of 1918 relating to day continuation schools, will be adapted to meet the requirements of the post-war world. The term 'day continuation school' will be abandoned and the institutions required for this purpose referred to generally as young people's colleges. It is important to make clear that what is in view is no "going back to school" a mere extension on a part-time basis of previous full-time schooling, but the entry on a new phase of life and development

68. All young persons from fifteen to eighteen will be required to attend an appropriate centre part-time, unless they are in full time attendance at school, or otherwise under suitable part-time instruction. A number of firms already have schools in connection with their factories for the training, both general and vocational, of their young employees, which have proved of the greatest value to the young people themselves and to the whole life of the undertakings. These schools are in some cases conducted and financed entirely by the firms concerned, and in others with financial assistance from public funds. In some instances schools are provided in works but are conducted and maintained by the local education authority. Provision will be made for the requirement to attend an appropriate centre to be discharged at such works schools subject to their satisfying the Board and the local education authority as to the content and quality of the training provided and being open to inspection

69. The hours of attendance at young people's colleges would be taken from the hours of employment as regulated by existing law, or by any subsequent industrial legislation. At first at any rate attendance would be limited to a day a week or its equivalent. This is clearly a minimum, and it is held by some that the first introduction to employment might well be on a half-time basis. The new service can, however, only be established by stages and developed gradually, and provision within the limits now contemplated will present a sufficiently considerable task. The full age range will be built up gradually, children of fifteen attending in the first year of operation; in the second year those of fifteen and sixteen, the full range fifteen to eighteen being attained in the third year following the Appointed Day for bringing the relevant sections into force.

70. In rural areas weekly attendance might often be impracticable, and in such areas provision may be made for comparatively short but continuous residential courses in the "dead" season. Centres so provided would be available at other times for use as camp schools and as holiday camps and centres for children and young persons from the towns. This will lay the foundation of an appreciation of country life and pursuits.

71. Special arrangements will be made for young persons serving at sea, a matter to which the shipping industry has already been giving consideration.

72 The question will naturally be asked—"Given this time for further education what use will be made of it?" The young persons concerned will be engaged in a wide variety of occupations—some training for one of the skilled crafts or in employment for which definite training is necessary some in employment in which no higher degree of skill or training is required, and others in non progressive occupations, commonly called "blind alley", which do not lead on to adult employment It must be remembered too that girls largely look to leaving factory, shop or office to get married and set up homes of their own

73 For all alike some basic elements should be included in their training Provision must be made for their physical well being through physical training and remedial exercises and instruction in health and hygiene The school medical service will be extended to cover them and, working in conjunction with the proposed State Medical Service, should have a marked effect on the health and physique of the nation Other essential elements will be training in clarity of expression and in the understanding of the written and the spoken word, together with some education in the broad meaning of citizenship—to give some understanding of the working of government and the responsibilities of citizens and some interest in the affairs of the world *around them*

74 When basic requirements have been met, the remaining hours may well be devoted to a variety of subjects according to individual needs and capacities For young persons of both sexes in all appropriate cases the time may be used for technical or vocational education related to their employment For others there would be a variety of courses including handicrafts, and the domestic arts designed to stimulate their interests keep their minds alert and create within themselves resources of satisfaction and self development In the case of those whose early employment is of the "blind alley" type, attention would be given to the further training that will assist them to transfer to more permanent work

75 It will be all important that the lessons of past experience should not be forgotten To obviate one of the causes of the previous failure to operate the Act of 1918, the Appointed Day for the start of compulsory part time education should be the same for the whole country In the second place the new system must not start under the handicap of poor and inconvenient premises, which are dispiriting to the staff, command little respect from the students, and carry no prestige with the public The problem of accommodation may be met in different ways in different instances In some cases provision for the young people's college may be combined with much needed extension of technical college accommodation In many cases separate buildings will be required, or provision may be made on the lines of the Village Colleges of Cambridgeshire In general, the young people's colleges should look to the future rather than to the past, i e , they should be associated with provision for adults and adult activities rather than with the schools which the young persons have left

76 The hours of compulsory attendance would by no means represent the sum total of the contribution which the college would make to the life and training of young people It should offer all the facilities necessary to promote, outside the actual hours of instruction, all kinds of activities, recreative and cultural The college would be in itself a youth centre taking its place in the extended Youth Service It will thus perform what is the real function of an education service—to provide a live environment in which, by the pursuit of a variety of interests and activities, both boys and girls alike may bring to fruition the character and capacities with which they are severally endowed

B TECHNICAL, COMMERCIAL AND ART EDUCATION

77. The field now covered by the term 'further education' is a wide one including, as it does, students of all ages from the school leaving age upwards, and almost every variety of subject Further education is in the main part time, and given usually in the evenings during the student's leisure hours The instruction is largely vocational, though there is also a substantial body of liberal education for both young people and adults The provision of part time education in young people's colleges forms an element of further education and will introduce a measure of compulsory attendance into a field where at present attendance is entirely voluntary

78 There are two major issues in this sphere to which particular attention must be drawn—the need for the further development of technical, commercial and art education, and the need to create a more extensive and flexible system of cultural and recreative provision for adolescents and adults

79 The provision of further education is at present a power and not a duty of local education authorities and, despite what many authorities have done, technical education has not hitherto made that advance which the needs of a highly industrialised community demand In particular, the standards of the buildings and equipment in use have often been deplorably low, and comparison with what can be seen in many other countries which have been our competitors in the world markets, can leave little cause for satisfaction

80 Plans were in hand immediately before the war to increase the provision of technical, commercial and art colleges and to expand and bring up to date, where necessary, those already in existence For this purpose a programme of capital expenditure of some £12,000,000 was contemplated The post war cost of such a programme will inevitably be higher, but it will be of the first importance that these plans should be revised and expanded to meet new requirements, and, as soon as possible, carried into effect Provision will accordingly be made to place a duty on education authorities to provide adequate facilities for technical, commercial and art education, both full time and part-time This general duty will be translated into concrete terms by requiring authorities to submit schemes for further education which, when approved by the Board, authorities will be required to put into effect by such stages as the Board may determine

81 The provision of facilities for vocational training will, by itself, not be enough The country cannot afford to rest content with a system under which the technical education of its potential skilled workers, industrial leaders, or commercial executives is left so largely to the initiative of the young employees themselves The vocational training that has come into being within the system of public education has in the main not come in response to any demand from industry or commerce, but has depended on the enterprise and tenacity of individual students anxious to equip themselves more fully to advance in life

82 No doubt this system—if it can be called a system—has brought forward many young men and women of high intelligence and sturdy character But a much closer collaboration between industry and commerce and the education service is essential if the country is to develop a national system and to secure a personnel with a training and knowledge adequate to the needs

of the future The country has moved a long way from the days when the craftsman learned his trade from the master Under modern conditions of production it becomes increasingly difficult to secure the full education necessary for the skilled tradesman, and that background knowledge which will enable him to keep pace with the march of science and invention The subdivision of labour, the conveyor belt and the demands of production—all these tend to diminish the value of training afforded by the normal course of employment It will be by a combination of experience in the factory, farm or office and attendance at the school or institute that it will be possible to establish the belief that it is quality, and not cheapness, or labour that is sought

83 During the war, the technical colleges have made a contribution to the specialised training of the personnel required in various departments of the war effort, the value of which cannot easily be overrated Given the opportunity, they have shown—notwithstanding the handicaps imposed by war conditions—that they can assist in effective training to a degree and in a way, the possibilities of which industry has not hitherto generally appreciated What is wanted, if the full value is to be obtained from the developments envisaged, is that industry and commerce should review their arrangements for training, and should co operate in associating the technical colleges and art schools more fully with the industrial and commercial life of the country

84 Already there is a stirring in a number of industries which are addressing themselves to these important questions and consultations have been initiated with various industries by the Board of Education and the Ministry of Labour and National Service with a view to working out more ordered systems of training and apprenticeship adapted to the conditions of today and suited to the very differing requirements of different branches of industry In this way it is hoped to build up in each major industry a system which will be accepted and applied, not by individual firms here and there, but on a national basis throughout the industry

C ADULT EDUCATION

85 Without provision for adult education the national system must be incomplete, and it has been well said that the measure of the effectiveness of earlier education is the extent to which in some form or other it is continued voluntarily in later life It is only when the pupil or student reaches maturer years that he will have served an apprenticeship in the affairs of life sufficient to enable him fully to fit himself for service to the community It is thus within the wider sphere of adult education that an ultimate training in democratic citizenship must be sought

86 A start will have been made by the extension of secondary education and by continued part time education By these means increased educational interest in later years should be stimulated More immediately, the education services that have operated in the forces, and the interest in inquiry and discussion developed by the Army Bureau of Current Affairs, and by similar developments among Civil Defence personnel, are likely to produce a much larger public anxious to pursue a variety of subjects on informal lines The activities of C E M A in war time have also created a new interest in all that is best in music and arts

87 While the more serious and solid studies that have formed the backbone of adult education at its best in the past must be maintained there will be room for new methods and new approaches to meet new demands In particular, there will need to be developed appropriate centres, including a number of residential colleges, which will not only provide the educational courses which the adult population may need, but will add to them the values associated with the life of a corporate institution

88 It is clear that many agencies will be involved Already a substantial contribution is made to what is termed in the Board's Regulations 'the liberal education of adults' by the tutorial classes, extension courses and lectures provided by university bodies, and by other courses conducted by voluntary agencies Among these, the Workers' Educational Association holds a long established position Provision is also made for adults over a wide range of non-vocational and cultural subjects by local education authorities This variety of elements is very necessary both to meet the diversity of interests that ask to be catered for, and to bring into being a truly democratic system of public education Local authorities will undoubtedly be called upon to play a larger part than heretofore in this field, and it is clear that there must not only be consultation and co operation between authorities in contiguous areas but also between them and the other bodies concerned Provision will be made to extend to adult education the same type of scheme procedure as to the technical side and to secure that authorities shall consult with other agencies concerned before schemes are submitted for the consideration of the Board

THE YOUTH SERVICE

89 Since the Act of 1918 it has been recognised that the education service has a concern to provide opportunities for the healthy use of leisure by children and young people to supplement and reinforce the values of more formal education This recognition has grown and extended At first the activities of local education authorities in this direction were confined to the needs of those attending some school or other educational institution and under the age of eighteen, but by an amendment made in 1937 this limitation to those attending school, together with the age limitation, was removed In effect, the promotion of facilities to enable both young persons and adults to use their leisure to advantage in a wide variety of activities covered by the general terms 'social and physical training' is now recognised as standing by itself as an appropriate element in the education service

90 In this sphere, particular attention is naturally due to the interests and requirements of those young persons who have left school and entered on employment, and who so largely pass outside the confines for formal training Especially with the upheaval of war has it been felt necessary to maintain and extend those influences which can contribute both to the steadiness and satisfaction of the young life of the nation Shortly after the outbreak of war, the Youth Service was brought into being to extend the recreational training of young people by assisting the national voluntary organisations which have worked so long and so well in this sphere, and by enlisting the assistance of local education authorities in increasing the opportunities open to young persons to use their leisure wisely to their own advantage and, in great measure, to the advantage of the war effort

91 Notwithstanding the restrictions inevitably imposed by war conditions on the available supply of leaders, premises and equipment, the service has shown a remarkable expansion during the past three and a half years There is now a far higher proportion than at any previous time

of young people associated with healthy leisure-time training and recreation without compulsion or regimentation of any sort.

92. It was made clear from the start that the service was not to be regarded simply as a wartime expedient, but that it should take its place as an integral part of the national system of education. This principle was reinforced by the registration of young persons of sixteen to eighteen years of age, the follow-up of which was made the responsibility of the local education authorities. With the extended period of full-time education and the introduction of compulsory part-time education, it may be anticipated that the interest of young people in worth-while pursuits will be further stimulated, and that there will be an increased demand for the facilities offered by clubs, youth centres and the national associations of the various voluntary bodies, which the Youth Service is designed to expand. The young people's college will develop their social and community life and will make provision for a wide range of leisure-time interests. The partnership that is now being established between the voluntary agencies and the education authorities through the local youth committees should be of the greatest assistance in securing, on a widely extended scale, a variety of opportunities suited to diverse interests, which will enable young people to obtain the experience of community life, self-government and individual self-discipline which are the foundations of democratic citizenship."

In addition to the above quoted extract from the White Paper on Educational Reconstruction (Cmd. 6458 of 1943) relative to the Youth Service, reference may be made to the Report which the Youth Advisory Council (appointed by the President of the Board of Education in 1942 to advise him on questions relating to the Youth Service in England) presented in June, 1943, and was published later in the year under the title of "The Youth Service after the War". The Report was published before the introduction of the Education Bill and in a prefatory note Sir Maurice Holmes stated that the Board was not to be regarded as committed to acceptance of its conclusions and recommendations. The Board believed, however, that the findings of the Council would be of interest not only to those engaged in the day-to-day work of the Youth Service but also to a wider public, and that the Report would make a useful contribution to the promotion of a more general and informed appreciation of the importance and potentialities of that new development of the education service. The Report, which is 32 pages in length, contains an Introduction and the following chapters :—

(i) The Background : Home ; School ; Work ; Religion in Youth Work.
(ii) The Use of Leisure.
(iii) The Pre-Service Training Organisations : Boys ; Girls.
(iv) Youth Committees.
(v) Summary of Principal Recommendations ; and two Appendices, containing—
(1) A copy of Board of Education Circular 1486 (dated 27th November, 1939) relating to the Service of Youth ; and
(2) A Memorandum on the Services Cadet Organisations, which deals with the Sea Cadet Corps, the Army Cadet Force and the Air Training Corps.

Effect has already been given in the present Act to some of the recommendations in the Report ; some are of an administrative nature and do not require legislative action, whilst on others the decisions of the Government remain to be announced or to be implemented.

The main changes which are made in the law by the present Act are as follows : —

(1) The former power of local education authorities to aid the supply of higher education has been converted into a duty to provide adequate facilities for full-time and part-time education for persons over compulsory school age (paragraph (*a*) of this section). In the Bill as presented to Parliament the duty was to provide facilities for education in "technical, commercial and art subjects" but the scope of the provision was broadened during the passage of the Bill to make it easier to provide higher forms of education than would have been included in the terms "technical, commercial and art subjects". This change should, therefore, be borne in mind in relation to the quoted part of the White Paper, *supra*, which refers to technical, commercial and art education. This provision links up with the new power contained in section 84, p. 221, *post*, with the consent of the Minister to provide financial assistance to any university or university college for the purpose of improving the facilities for further education available for the local education authority's area.

(2) For the purpose of discharging their main duty under the last paragraph, local education authorities are, by section 42, p. 170, *post*, to be required to submit schemes, after consultation with the universities, with educational associations and with the local education authorities of adjacent areas, giving particulars of the provision they propose to make. When the schemes have been approved by the Minister, it will become the duty of the authorities concerned to put the schemes into effect by such stages as the Minister may determine (section 40 (2), *ibid.*). As stated in the Explanatory Memorandum issued with the Bill (Cmd. 6492 of 1943, at p. 9) :—

"This will open up the way to a much needed extension of technical and vocational training and will also secure that proper provision is made to carry on those wider interests which have been stimulated among men and women serving in the Forces and elsewhere during the war".

(3) As a further part of the duty to provide adequate facilities for full-time and part-time education for persons over compulsory school age, local education authorities are to be required to establish and maintain county colleges, which are defined as—

"Centres approved by the Minister for providing for young persons who are not in full time attendance at any school or other educational institution such further education, including physical, practical and vocational training, as will enable them to develop their various aptitudes and capacities and will prepare them for the responsibilities of citizenship".

These county colleges are to make provision for the part time education in working hours of young persons up to the age of eighteen (sections 43–46, pp. 171 to 177, *post*). The provisions relating to county colleges form a new version of the proposals for the establishment of day continuation schools, to which reference has been made, which formed the principal innovation of the "Fisher" Act of 1918 and were re-enacted in sections 75–79 of the Education Act, 1921 ; 7 Halsbury's Statutes 170–174, but were never effectively implemented. The opportunity has been taken to amend and clarify requirements in certain respects ; in particular, it may be noted that the previous obligation to attend for a specified number of hours a year has become an obligation to attend on one whole day on two half days for 44 weeks each year, or, where

continuous attendance is more suitable, for a continuous period of eight weeks or two periods of four weeks each year (section 44 (3), p 172, *post*).

To facilitate the operation of the system a duty is placed upon every young person who is liable for compulsory attendance for further education to keep the local education authority informed of his address (section 45 (1) (*a*), p 176, *post*) A similar duty is placed upon employers, who are also required to inform the authority when the young persons enter or leave their employment (section 45 (1) (*b*), p 176, *post*)

The date on which the duty of providing county colleges is to commence is to be fixed by Order in Council which, however, is to be not later than 1st April, 1948 (section 41 (1), p 164, *post*), or, if an order retaining the school leaving age temporarily at fourteen is made under section 108 (3), p 250, *post*, not more than three years from the expiry of that order In fact an order has been made under section 108 (3), *ante*, so that the date may ultimately be as late as 1st April, 1950.

By section 60, p 195, *post*, the time which a young person is required by a college attendance notice served on him under section 44, p 172, *post*, is to be taken into consideration in calculating his working hours or overtime for the purpose of any enactment or trade agreement

The obligation on young persons to attend will be imposed, under direction of the Minister, as soon as the necessary provision has been made (section 42 (1), p 170, *post*)

Until the making of a scheme of further education for a particular area and the imposition of the duty to establish county colleges, the position is regulated by section 47, p 178, *post* This section does two things, *viz* :—

(1) Unless the Minister otherwise directs, it preserves the situation previously existing and requires the local education authority to continue to maintain or assist any school or other educational institution which was maintained or assisted before 1st April, 1945, either by the authority or in the case of county councils, by the council of any county district within the county under section 70 of the Education Act, 1921, 7 Halsbury's Statutes 168, other than schools which are maintained or assisted as secondary schools under the Act, and

(2) subject to the approval of the Minister, it enables the authority to provide any additional facilities for further education (other than at county colleges) as appear expedient for meeting the needs of the area.

(a) **" Subject as hereinafter provided "**.—This refers, in the first place, to the proviso to this section, and secondly to varying dates on which different provisions relating to further education come into operation This section, with sections 42 and 47, pp 170 and 178, *post*, and section 43 (other than subsection (1)), p 171, *post*, comes into operation on 1st April, 1945 In the case of this section, however, 1st April, 1945, is no more than a theoretically operative date, since the proviso limits the duty imposed by it to facilities secured in accordance with schemes of further education (under section 42, p 170, *post*) or at county colleges (under section 43, p 171, *post*), and neither of those sections automatically come into operation on that date In the case of section 42, *supra*, however, the duty to prepare and submit schemes of further education does not arise until the Minister issues a direction, which may be general or issued to different authorities at different times After a scheme has been approved the Minister may from time to time direct the local education authority to take measures for giving effect to it As to this, Ministry of Education Circular 1 (15th August, 1944) stated that, in view of the considerable burden which would be laid upon authorities by the preparation of development plans (under section 11, p 103, *ante*), the Minister did not at that juncture propose to ask for the submission of schemes of further education under section 42, *supra* At the same time, however, the Minister desired to impress upon authorities the vital importance in the national interest of the further development of technical and adult education He would, therefore, be glad to receive at any time under section 47, *supra*, such interim proposals as individual authorities might find it possible to put forward The above-mentioned provisions (other than the general duty imposed by this section) do not relate to county colleges, which are referred to in section 43, p 171, *post*. The duty to establish county colleges under that section does not come into force until a date which is to be fixed by Order in Council but which, however, must be on or before the expiry of three years from 1st April, 1945, or the date of the raising of the school-leaving age to fifteen, if later than 1st April, 1945 (see sections 43 (1), *supra*, and 108 (3), p 250, *post* As soon as practicable after 1st April, 1945, however, every local education authority will be directed by the Minister to prepare and submit for his approval a plan for the provision of county colleges Section 44, p 172, *post*, will be brought into operation by order of the Minister as soon as practicable after the duty to establish county colleges is imposed by Order in Council under section 43, *supra*, and section 45, p. 176, *post*, will have effect from the same date The application of section 46, p 177, *post*, is dependent upon the date of operation of the two previous sections

Thirdly, the general duty imposed by this section is subject to the more specific duties imposed or which may be imposed under the following sections with regard to the preparation and submission of schemes and plans and as to the provision of facilities for further education and the establishment of county colleges

Power to enforce the execution of the local education authority's functions with respect to further education is given to the Minister by section 99, p 237, *post*

(b) **" Local education authority "**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(c) **" Adequate facilities "**.—Except as regards county colleges (section 43, p. 171, *post*), the section does not stipulate that the adequate facilities here referred to shall be provided by the local education authority, but that the authority must secure the provision of facilities This might take several forms, *e g*, the stimulation of private efforts, the provision of assistance (as defined in section 114 (1) and (2), p 255, *post*), the maintenance of schools, colleges and other institutions not established by the authority, and the grant of scholarships, etc, under section 81, p 219, *post*, as well as the establishment and maintenance of schools, colleges and institutions by the local education authority

By section 53, p 187, *post*, every local education authority must secure that the facilities for further education provided for its area include adequate facilities for recreation and social and physical training

There is no definition of " adequate facilities " in the Act but the duty to secure them may

be enforced by the Minister under section 99, p 237, *post*, if necessary by *mandamus*, so that the Minister is in a position to determine whether or not the duty has been fulfilled

(d) **"Further education".**—By section 114 (1) p 255, *post*, the term has the meaning assigned to it by this section so that reference is necessary for a definition to paragraphs (a) and (b) hereof

(e) **"Full-time and part-time education"**.—"Full time" education is not defined in the Act Part time education presumably means anything less than full time, except in the case of county colleges, as to which see sections 44 (3) and (4), pp 172 3, *post*

(f) **"Persons over compulsory school age".**—By section 11 (1), p 103, *post*, "compulsory school age" has subject to the provisions of section 38, p 160, *ante*, the meaning assigned to it by section 35, p 155 *ante* See, in particular, note (a) to section 33, p 151, *ante*

(g) **"Leisure-time occupation"**.—See the extracts from the White Paper on Educational Reconstruction (Cmd 6458 of 1943) headed "Adult Education" and "The Youth Service", quoted in the general note to this section As regards adult education, this refers more particularly to cultural activities such as those organised at the Cambridge Village Colleges and by such bodies as C E M A , etc

Together with section 53, p 187, *post*, this provision replaces part of the Physical Training and Recreation Act, 1937 , 30 Halsbury's Statutes 712—see the notes to that section

(h) **"Schemes of further education".**—As to the preparation and submission for approval to the Minister of schemes for further education, see section 42, p 170, *post* The interim position from 1st April, 1945, until the date on which a scheme of further education is first approved by the Minister for the area of a local education authority, is covered by section 47, p 178 *post* See also note (1), *ante*

(i) **"County colleges"**.—See sections 43 46, pp 171 to 177, *post*

42. Schemes of further education.—(1) Every local education authority (a) shall, at such times and in such form as the Minister may direct (b) prepare and submit to the Minister schemes of further education (c) for their area giving particulars of the provision which the authority propose to make for fulfilling such of their duties with respect to further education, other than duties with respect to county colleges (d), as may be specified in the direction **[338]**

(2) Where a scheme of further education has been submitted to the Minister by a local education authority the Minister may, after making in the scheme such modifications if any as after consultation with the authority he thinks expedient, approve (e) the scheme and thereupon it shall be the duty of the local education authority to take such measures as the Minister may from time to time, after consultation with the authority, direct for the purpose of giving effect to the scheme **[339]**

(3) A scheme of further education approved by the Minister in accordance with the provisions of this section may be modified supplemented or replaced by a further scheme prepared submitted and approved in accordance with those provisions, and the Minister may give directions revoking any scheme of further education, or any provision contained in such a scheme, as from such dates as may be specified in the directions, but without prejudice to the preparation submission and approval of further schemes **[340]**

(4) A local education authority shall, when preparing any scheme of further education, have regard to any facilities for further education provided for their area by universities, educational associations, and other bodies and shall consult any such bodies as aforesaid and the local education authorities for adjacent areas , and the scheme, as approved by the Minister, may include such provisions as to the co-operation of any such bodies or authorities as may have been agreed between them and the authority by whom the scheme was submitted **[341]**

NOTES

This section, together with section 41 p 164, *ante*, and 43 47, pp 171 to 178, *post*, are discussed in the general note to section 41, *supra*

(a) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **"As the Minister may direct".**—As to the enforcement of such a direction, which may be either general or addressed to individual local education authorities at different times, see section 99 (1) p 237, *post*, and as to the revocation or variation of such a direction, see section 108, p 250, *post* Ministry of Education Circular 1 (15th August, 1944) stated that, in view of the considerable burden which would be laid upon authorities by the preparation of development plans (under section 11, p 103, *ante*), the Minister did not at that juncture propose to ask for the submission of schemes of further education under section 42, p 170 *ante* At the same time, however, the Minister desired to impress upon authorities the vital importance in the national interest of the further development of technical and adult education He would therefore, be glad to receive at any time under section 47, p 178 *post*, such interim proposals as individual authorities might find it possible to put forward

(c) **"Schemes of further education"**.—By section 114 (1) p 255, *post*, "further education" has the definition given to it by section 41, p 164, *ante* (see paragraphs (*a*) and (*b*) thereof) Compare the duty imposed by this section with the duties imposed by section 43, p 171 *post* to prepare and submit plans for county colleges, and by section 11, p 103, *ante*, to prepare and submit development plans for securing the provision of a sufficiency of primary and secondary schools As to the revocation, modification, supplementation or replacement of a scheme of further education see subsection (3) of this section The interim position from 1st April 1945, until the date upon which a scheme of further education is first approved by the Minister for the area of a local education authority is covered by section 47, p 178, *post*

(d) **"County colleges"**.—See sections 43 46, pp 171 to 178 *post*, and, in particular section 43 (2) p 171, *post*, as to the preparation and submission to the Minister of plans for the provision of county colleges

(e) **"Approve"**.—In the case of schemes submitted under this section, the duty to carry them out is imposed, in theory at any rate immediately approval is given by the Minister, but in the case of plans for county colleges submitted under section 43, p 171, *post*, the duty to carry out the plan is imposed by an order of the Minister, and in the case of development plans submitted under section 11 p 103 *ante*, by local education orders made by the Minister under section 12, p 107, *ante* The reasons for these differences of procedure are not apparent As to the enforcement of the duty, see section 99 (1) p 237, *post*

43. County colleges.—(1) On and after such date as His Majesty may by Order in Council determine, not later than three years after the date of the commencement of this Part of this Act (a), it shall be the duty (b) of every local education authority (c) to establish and maintain (d) county colleges (e), that is to say, centres approved by the Minister for providing for young persons (f) who are not in full time attendance (g) at any school (h) or other educational institution (i) such further education (k), including physical, practical and vocational training (l), as will enable them to develop their various aptitudes and capacities (m) and will prepare them for the responsibilities of citizenship [342]

(2) As soon after the date of the commencement of this Part of this Act as the Minister considers it practicable so to do, he shall direct (n) every local education authority to estimate the immediate and prospective needs of their area (o) with respect to county colleges having regard to the provisions of this Act, and to prepare and submit to him within such time and in such form as may be specified in the direction a plan (p) showing the provision which the authority propose to make for such colleges for their area, and the plan shall contain such particulars as to the colleges proposed to be established as may be specified in the direction [343]

(3) The Minister shall, after considering the plan submitted by a local education authority and after consultation with them, make an order for the area of the authority (q) specifying the county colleges which it is the duty of the authority to maintain, and the order shall require the authority to make such provision for boarding accommodation (r) at county colleges as the Minister considers to be expedient the order so made for any area shall continue to regulate the duties of the local education authority in respect of the matters therein mentioned and shall be amended by the Minister after consultation with the authority, whenever, in his opinion, the amendment thereof is expedient by reason of any change or proposed change of circumstances [344]

(4) The Minister may make regulations (s) as to the maintenance government and conduct of county colleges and as to the further education to be given therein [345]

NOTES

This section together with sections 41 42 and 44–47 pp 164 and 170, *ante*, and 172 to 178 *post*, is discussed in the general note to section 41, *supra*

(a) **"The date of the commencement of this Part of this Act"**.—By section 119 p 267, *post* Part II of the Act comes into operation on 1st April, 1945

(b) **"It shall be the duty"**.—As to the enforcement of this duty, see section 99 (1), p 237, *post*

(c) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267, *post*

(d) **"Maintain"**.—This word is defined in section 114 (1) and (2), p 255, *post*

(e) **"County colleges"**.—The term is defined by the following words of the subsection and takes the place of "continuation school", which was not specifically defined in the Education Act, 1921 By subsection (2) of this section the immediate and prospective needs of every area are to be estimated and a plan for their provision submitted to the Minister Subsequently, under subsection (3), *ibid*, the duty to carry out the plan as approved by the Minister will be imposed by order The maintenance, government and conduct of county colleges, and the

education to be given, may be regulated by the Minister under subsection (4), *ibid.* The means by which young persons are to be required to attend young people's colleges are set out in sections 44 and 45, pp. 172 and 176, *post*, and provision is made in section 46, p. 177, *post*, to enable attendance to be enforced.

(f) **"Young persons".**—By section 114 (1), p. 255, *post*, "young person" means a person over compulsory school age who has not attained the age of eighteen years. "Compulsory school age" is defined by section 35, p. 155, *ante*, and, as regards persons at special schools, by section 38, p. 160, *ante*. From 1st April, 1945, the school leaving age will be fifteen, unless under section 108 (3), p. 250, *post*, the raising of the school leaving age from fourteen to fifteen is postponed for not more than two years. In fact, the Minister has made an order under that subsection, and Ministry of Education Circular 1 (15th August, 1944) states that the order will not cease to have effect earlier than 1st April, 1946. Then, under the proviso to section 35, *supra*, the school-leaving age is to be raised to sixteen "as soon as the Minister is satisfied that it has become practicable" to do so. In consequence it is highly probable that when subsection (1) of this section comes into operation it will be necessary to provide in county colleges for an age range of three years which will be reduced to two years when the school-leaving age is raised to sixteen.

(g) **"Full-time attendance".**—This term is not defined in the Act, though some indication of its meaning may be obtained from sections 35-40, pp. 155 to 163, *ante*.

(h) **"School".**—By section 114 (1), p. 255, *post*, "school" means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school. It should be remembered that secondary education is provided for senior pupils (section 8 (1) (*b*), p. 97, *ante*) who do not cease to be senior pupils until they reach the age of nineteen years.

(i) **"Other educational institution".**—This term is not defined; other types of educational institution referred to in the Act (other than county colleges, which do not provide full-time education, except for limited periods) include colleges and other establishments for the training of teachers (section 62, p. 198, *post*), universities and university colleges (section 84, p. 221, *post*). Compare the definition of "educational establishment" in section 77, p. 213, *post*.

(k) **"Further education".**—An exhaustive definition of this term is contained in section 41, p. 164, *ante*.

(l) **"Physical practical and vocational training".**—As regards the provision of facilities for recreation and social and physical training, see section 53, p. 187, *post*.

(m) **"Their various aptitudes and capacities".**—Compare the phrase here used with the phrase "their different ages, abilities and aptitudes" used in section 8 (1), p. 97, *ante*, in relation to primary and secondary education, and see note (n) to that section, p. 98, *ante*.

(n) **"He shall direct".**—As to the enforcement of such a direction, see section 99 (1), p. 237, *post*, and as to the revocation or variation thereof, see section 111, p. 254, *post*.

(o) **"Immediate and prospective needs of their area".**—It will be necessary to have regard (*inter alia*) to the results of the raising of the school-leaving age under section 35, p. 155, *ante*; see note (f), supra.

(p) **"A plan".**—Compare the requirements in respect of this plan with those relating to schemes of further education under section 42, p. 170, *ante*, and the development plans to be made under section 11, p. 103, *ante*.

(q) **"An order for the area of the authority".**—An order has the same effect as a direction—see note (n), *supra*—except that special provision is made in the latter part of this subsection with respect to the amendment of an order under this section.

(r) **"Boarding accommodation".**—As to the payment of fees in respect of such boarding accommodation, see section 61 (2) and (3), p. 196, *post*, and as to the provision of board and lodging otherwise than at a county college and the recovery of the cost thereof, see sections 50 and 52, pp. 184 and 186, *post*.

(s) **"Regulations".**—As to the making of regulations, see section 112, p. 254, *post*.

44. Duty to attend county colleges in accordance with college attendance notices.—(1) This section shall come into operation (a) on such date as soon as practicable after the date determined by Order in Council under the last foregoing section as the Minister may by order direct (b). **[346]**

(2) It shall be the duty (c) of the local education authority (d) to serve upon every young person (e) residing in their area who is not exempt from compulsory attendance (f) for further education (g) a notice (h) (hereinafter referred to as a "college attendance notice") (i) directing him to attend (j) at a county college (k), and it shall be the duty of every young person upon whom such a notice is served to attend at the county college named in the notice in accordance with the requirements specified therein (l). **[347]**

(3) Subject to the provisions of the next following subsection, the requirements specified in a college attendance notice shall be such as to secure the attendance (m) of the person upon whom it is served at a county college—

(*a*) for one whole day, or two half-days, in each of forty-four weeks in every year while he remains a young person; or

(*b*) where the authority are satisfied that continuous attendance would

be more suitable in the case of that young person, for one continuous period of eight weeks, or two continuous periods of four weeks each, in every such year ;

and in this section the expression " year " means, in relation to any young person, in the case of the first year the period of twelve months beginning with the first day on which he is required by a college attendance notice served on him to attend a county college, and in the case of every subsequent year the period of twelve months beginning immediately after the expiration of the last preceding year :

Provided that in respect of the year in which the young person attains the age of eighteen (n) the requirements specified in the notice shall be reduced (o) to such extent as the local education authority think expedient for securing that the attendances required of him until he attains that age shall be as nearly as may be proportionate to those which would have been required of him during a full period of twelve months. [348]

(4) If, by reason of the nature of the employment of any young person or of other circumstances affecting him, the local education authority are satisfied that attendance in accordance with the provisions of the last foregoing subsection would not be suitable in his case, a college attendance notice may, with the consent of the young person (p), require his attendance in accordance with such other arrangements as may be specified in the notice, so, however, that the requirements specified in the notice in accordance with such arrangements as aforesaid shall be such as to secure the attendance of the young person for periods amounting in the aggregate to three hundred and thirty hours in each year, or in the case of the year in which he attains the age of eighteen, to the proportionately reduced number of hours. [349]

(5) Except where continuous attendance is required, no college attendance notice shall require (q) a young person to attend a county college on a Sunday or on any day or part of a day exclusively set apart for religious observance by the religious body to which he belongs, or during any holiday or half-holiday to which by any enactment regulating his employment or by agreement he is entitled, or, so far as practicable, during any holiday or half-holiday which is allowed in accordance with any custom of his employment, or between the hours of six in the evening and half past eight in the morning :

Provided that the Minister may, on the application of any local education authority, direct that in relation to young persons in their area or in any part thereof employed at night or otherwise employed at abnormal times this subsection shall have effect as if for the reference to the hours of six in the evening and half past eight in the morning there were substituted a reference to such other times as may be specified in the direction. [350]

(6) The place, days, times, and periods, of attendance required of a young person, and the period for which the notice is to be in force, shall be specified in any college attendance notice served on him ; and the requirements of any such notice in force in the case of a young person may be amended as occasion may require either by the authority by whom it was served on him or by any other local education authority in whose area he may for the time being reside, so, however, that the provisions of every such notice shall be such as to secure that the requirements imposed on the young person during each year while he remains a young person shall comply with the provisions of the last three foregoing subsections. [351]

(7) In determining what requirements shall be imposed upon a young person by a college attendance notice or by any amendments to such a notice, the local education authority shall have regard, so far as practicable, to any preference which he, and in the case of a young person under the age of sixteen years (r) his parent (s), may express, to the circumstances of his employment or prospective employment, and to any representations that

may be made to the authority (t) by his employer or any person proposing to employ him. [352]

(8) The following persons shall be exempt (u) from compulsory attendance for further education, that is to say—

(*a*) any person who is in full time attendance (v) at any school (w) or other educational institution (x) (not being a county college) ;

(*b*) any person who is shown to the satisfaction of the local education authority to be receiving suitable and efficient instruction either full time or for such times as in the opinion of the authority (y) are equivalent to not less than three hundred and thirty hours instruction in a period of twelve months ;

(*c*) any person who having been exempt under either of the last two foregoing paragraphs did not cease to be so exempt until after he had attained the age of seventeen years and eight months ;

(*d*) any person who is undergoing a course of training for the mercantile marine or the sea fishing industry approved by the Minister or who, having completed such a course, is engaged in the mercantile marine or in the said industry ;

(*e*) any person to whom, by reason of section one hundred and fifteen (z) or section one hundred and sixteen (aa) of this Act, the duties of local education authorities do not relate ;

(*f*) any person who attained the age of fifteen years (bb) before the date on which this section comes into operation (cc), not being a person who immediately before that date was required to attend a continuation school under the provisions of the Education Act, 1921 (dd).

If any person is aggrieved by a decision of a local education authority given under paragraph (*b*) of this subsection, he may refer the question to the Minister (ee), who shall give such direction thereon as he thinks fit. [353]

(9) If any young person upon whom a college attendance notice has been served fails to comply with any requirement of the notice, he shall be guilty of an offence against this section (ff) unless he proves (gg) either—

(*a*) that he was at the material time exempt from compulsory attendance for further education ; or

(*b*) that he was prevented from complying with the requirement by reason of sickness or any unavoidable cause ; or

(*c*) that the requirement does not comply with the provisions of this section. [354]

NOTES

This section, together with sections 41–43, pp. 164 to 171, *ante*, and 45–47, pp. 176 to 178, *post*, is discussed in the general note to section 41, p. 164, *ante*.

(a) **" This section shall come into operation ".**—The date to be determined by Order in Council under section 43 (1), p. 171, *ante*, on which the duty of establishing and maintaining county colleges will be imposed on local education authorities, may be any date between 1st April, 1945, and 1st April, 1948, (or in the event of an order being made under section 108 (3), p. 250, *post*, 1st April, 1950). Such an order has been made and will not cease to have effect before 1st April, 1946 (Ministry of Education Circular 1, 15th August, 1944), so that the date may be at least 1st April, 1949. It will be necessary after that date to allow sufficient time to enable county colleges to be established before this section is brought into operation. The section does not specifically state that the Minister may bring it into operation in different areas on different dates, but some local education authorities will doubtless provide adequate facilities before others and some such arrangement may ultimately be necessary, in spite of the practical problems which would be created

(b) **" As the Minister may by order direct ".**—Such an order may be revoked, if the Minister thinks fit, under section 111, p. 254, *post*, or it may be varied, e.g., the date of operation may be changed.

(c) **" It shall be the duty ".**—As to the enforcement of this duty, see section 99 (1), p. 237, *post*.

(d) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*.

(e) **" Young person ".**—See note (f) to section 43, p. 172, *ante*.

(f) **" Who is not exempt from compulsory attendance ".**—See subsection (8) of this section and, as regards certificates of exemption, section 45 (3) and (5), pp. 176-7, *post*.

(g) **" Further education ".**—An exhaustive definition of this term is contained in section 41, p. 164, *ante*.

(h) **" A notice ".**—As to the service of notices, see section 113, p 254, *post*, and of copies upon employers, see section 45 (2), p 176, *post*

(i) **" College attendance notice ".**—As to the requirements which may be specified in a notice, see note (l), *infra* Under section 45 (3) p 176, *post*, the Minister may by regulations make provision as to the form of college attendance notices As to the effect of a college attendance notice upon the computation of the working hours of the young person concerned, see section 60, p 195, *post*

(j) **" Directing him to attend ".**—Compare the provisions made by this section with respect to compulsory attendance at county colleges with those made by section 76 of the Education Act 1921, 7 Halsbury's Statutes 170, with respect to compulsory attendance at continuation schools As to the revocation or variation of such a direction, see section 111, p 254, *post*

(k) **" County college "** —See note (e) to section 43, p 171, *ante*

(l) **" In accordance with the requirements specified therein ".**—As to the requirements to be specified in the notice, see subsections (3), (4) and (6) of this section Certain matters may not be required by a college attendance notice see subsection (5) of this section Furthermore, by subsection (7), *ibid*, the local education authority, in determining what requirements shall be imposed by a college attendance notice must have regard, so far as practicable, to the matters specified in that subsection The specified requirements may be amended as occasion may require (subsection (6), *ibid*) As regards failure to comply with any specified requirements, see subsection (9) of this section

(m) **" Attendance ".**—In the case of continuation schools under the Education Act, 1921, section 76 thereof, 7 Halsbury's Statutes 170, required young persons to attend, on such days as the local education authority might require, for three hundred and twenty hours in each year, distributed as regards times and seasons as might best suit the circumstances of each locality Note also the provision made by subsection (4) of this section for the substitution of different arrangements where those specified in this subsection would not be suitable As to the provision of boarding accommodation otherwise than at a county college in cases where continuous attendance appears to be desirable, see section 50 (1), p 184, *post*

(n) **" Attains the age of eighteen ".**—By section 114 (5), p 258, *post*, a person in attendance at a county college who attains any age during the term of the college shall be deemed not to have attained that age until the end of the term

(o) **" Shall be reduced ".**—Where the performance of a duty is, as here, made contingent upon the opinion of the authority, the Minister may, under section 68, p 205, *post*, nevertheless give directions to the authority if he considers that the authority has acted, or proposes to act, unreasonably

(p) **" With the consent of the young person ".**—Though the alternative arrangements referred to in this subsection may only be adopted with the consent of the young person, once his consent (which should, for obvious reasons, be in writing) has been obtained and the notice served, the requirements specified in the notice will be fully as binding upon the young person as if they were in accordance with subsection (3) of this section and failure to comply with them will be an offence under subsection (9), *ibid*

(q) **" No college attendance notice shall require ".**—This subsection replaces and substantially re enacts section 76 (2) of the Education Act 1921, 7 Halsbury's Statutes 171

(r) **" Under the age of sixteen years ".**—See note (n), *supra* On a strict interpretation of section 114 (5), p 258, *post*, it would appear that, in the case of a young person at school, if the consultation takes place before the end of the term in which the young person attains the age of sixteen years, the local education authority must consult the parent as well as the young person, although he is in fact sixteen years old

(s) **" Parent ".**—By section 114 (1), p 255, *post*, " parent ", in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(t) **" Any representations that may be made to the authority ".**—As to the penalty for giving false information or recklessly making a false statement, see section 46 (3), p 177, *post*

(u) **" The following persons shall be exempt ".**—This subsection replaces section 77 of the Education Act, 1921, 7 Halsbury's Statutes 172

(v) **" Full-time attendance ".**—This term is not defined in the Act, though some indication of its meaning may be obtained from sections 35–40, pp 155 to 163, *ante*

(w) **" School ".**—By section 114 (1), p 255, *post*, " school " means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school By section 8 (1) (*b*), p 97, *ante*, secondary education is provided for senior pupils, who do not cease to be senior pupils until they reach the age of nineteen years

(x) **" Other educational institution ".**—This term is not defined, other types of educational institution referred to in the Act (other than county colleges) include colleges or other establishments for the training of teachers (section 62, p 198, *post*), universities and university colleges (section 84, p 221, *post*) Compare the definition of " educational establishment " in section 77 p 213 *post*

(y) **" In the opinion of the authority ".**—See note (p), *supra* It would appear that the last paragraph of this section, which gives to a person aggrieved by a decision of a local education authority under this section the specific right to refer the question to the Minister, is tautologous and unnecessary

(z) **" Section one hundred and fifteen "** —Section 115, p 265, *post*, contains a saving for persons employed by or under the Crown in any service or capacity with respect to which the Minister certifies that, by reason of the arrangements made for the education of children and young persons employed in that service or capacity, the exercise and performance of any powers or duties conferred or imposed by the Act are unnecessary

(aa) **" Section one hundred and sixteen ".**—Section 116 p 266, *post*, contains a saving, providing that the powers and duties conferred or imposed by the Act upon the Minister, on local education authorities, or on parents, shall not apply in respect of any person who —

(1) is the subject of an order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930, 11 Halsbury's Statutes 17, 144, 198, 23 *ibid* 154

(2) is being detained in pursuance of section 25 of the Lunacy Act, 1890, 11 Halsbury's

Statutes 29, or as a criminal lunatic or in pursuance of an order made under the Criminal Lunatics Act, 1884, 4 Halsbury's Statutes 411

(3) is undergoing treatment as a voluntary patient under section 1 or a temporary patient under section 5 of the Mental Treatment Act, 1930, 23 Halsbury's Statutes 154 157,

(4) is a person placed in an institution or a certified house, or under guardianship, under section 3 of the Mental Deficiency Act, 1913, Halsbury's Statutes 162,

(5) is the subject of an order under, *ibid*, section 6, 8 or 9, 11 Halsbury's Statutes, 164, 166, 167,

(6) is an inmate of a home approved under, *ibid*, section 50, 11 Halsbury's Statutes 188,

(7) is the subject of a notification under, *ibid*, section 51 (2), 11 Halsbury's Statutes 189

(8) has been reported under section 55 (3), p 190, *post*, as having been found incapable of receiving education at school or

(9) is detained in pursuance of an order made by any court

(bb) **"Attained the age of fifteen years".**—See note (o), *supra*

(cc) **"Date on which this section comes into operation".**—See subsection (1) of this section and note (a), *supra*

(dd) **"Required to attend a continuation school under the provisions of the Education Act, 1921"**.—See sections 75–79 of the 1921 Act 7 Halsbury's Statutes 170 174 Although those sections had been brought into operation in nine areas, namely, Stratford on Avon, Rugby, Birmingham, Swindon, West Ham, Southend on Sea, and the administrative counties of London and Kent, compulsory attendance was still enforced only in Rugby

(ee) **"He may refer the question to the Minister".**—As to the power of the Minister in such circumstances to require the young person to submit to a medical examination, see section 69 (2), p 205 *post*

(ff) **"An offence against this section"** —See section 46, p 177, *post*

(gg) **"Unless he proves".**—It will be noted that once the facts necessary to show the commission of an offence (viz, service of notice and failure to comply therewith) are proved the onus of proof of innocence is transferred to the defendant Exemption from compulsory attendance for further education may be proved in legal proceedings by the production of a certificate of exemption in the prescribed form purporting to be authenticated in the prescribed manner (section 45 (5), p 177, *post*) On the production of such a certificate the onus of proving that the facts stated in it are untrue will be transferred back to the prosecution (*ibid*)

An additional defence to those enumerated in this section is given by section 54, p 188, *post*, in certain circumstances to pupils who have been excluded from a county college under that section

45. Administrative provisions for securing attendance at county colleges. (1) For the purpose of facilitating the execution by local education authorities (a) of their functions under the last foregoing section (b), the following provisions shall, on and after the date on which that section comes into operation (c), have effect, that is to say —

(*a*) every young person (d) who is not exempt from compulsory attendance (e) for further education (f) shall at all times keep the local education authority in whose area he resides informed of his proper address (g),

(*b*) any person by whom such a young person as aforesaid is employed otherwise than by way of casual employment shall notify the local education authority for the area in which the young person resides when the young person enters his employment (h) and again when he ceases to be employed by him, and shall also notify the authority of any change of address of the employer, and, if known to him, of the young person, which occurs during the continuance of the employment,

and any person who fails to perform any duty imposed on him by the foregoing provisions of this section shall be guilty of an offence against this section (i) [355]

(2) The local education authority by whom a college attendance notice (k) is served upon any young person shall serve a copy thereof upon any person who notifies the authority that the young person is employed by him [356]

(3) The Minister may by regulations (l) make provision as to the form of college attendance notices, as to consultation and the exchange of information between different local education authorities, as to the issue of certificates of exemption (m) in respect of young persons who are exempt from compulsory attendance for further education, and generally for the purpose of facilitating the administration by local authorities of the provisions of this Part of this Act as to attendance at county colleges (n) [357]

(4) The Minister and the Minister of Labour shall issue instructions to local education authorities and to local offices of the Ministry of Labour

respectively for ensuring due consultation and exchange of information between such authorities and offices. [358]

(5) Any certificate of exemption in the prescribed form (o) purporting to be authenticated in the prescribed manner shall be received in evidence in any legal proceeding, and shall unless the contrary is proved, be sufficient evidence of the fact therein stated. [359]

NOTES

This section, together with sections 41–44, pp 164 to 172, *ante*, and 46 and 47, pp 177 and 178, *post*, is discussed in the general note to section 41, p. 164, *ante*.

(a) **"Local education authorities".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **"The last foregoing section".**—See section 44, p 172, *ante*.

(c) **"The date on which that section comes into operation".**—See section 44 (1), p 172, *ante*, and especially note (a) to that section

(d) **"Young person".**—See note (f) to section 43, p 172, *ante*

(e) **"Not exempt from compulsory attendance".**—A list of persons who are exempt from compulsory attendance for further education is given in section 44 (8), p 174, *ante*

(f) **"Further education".**—An exhaustive definition of this term is given in section 41, p 164, *ante*

(g) **"His proper address".**—No special provision is made in relation to attendance for further education as is made by section 39 (3), p 161, *ante*, as regards the children of parents who are engaged in any trade or business requiring them to travel from place to place. In such cases the obligation still remains to notify every change of address. This will obviously be somewhat difficult in the case, for example, of young persons living on canal boats and the solution appears to be to require such young persons to attend for a continuous period or periods under section 44 (3) (b), p 172, *ante*. As to the giving of false information or recklessly making a false statement, see section 46 (3), p 177, *post*

(h) **"When the young person enters his employment".**—When, for the purpose of taking up employment, a young person changes his address from the area of one local education authority to another the obligation of the employer will presumably be to notify the authority from the area from which he came, since that would be the authority then having a record of the young person On a strict interpretation of the provision, however, if the young person changes his address on the day before he enters his employment, the notification should be addressed to the authority in whose area the new address is situate, and in view of the fact that college attendance notices are to be served by the authority in whose area the young person resides (section 44 (2), p. 172, *ante*), this would also appear to be the more satisfactory arrangement. In view of the probability of many such notifications being addressed to the wrong authorities it is to be hoped that the regulations which the Minister is empowered to make under subsection (3) of this section will make adequate provision for the exchange of information between different authorities.

(i) **"An offence against this section".**—See section 46, p 177, *post*.

(k) **"College attendance notice".**—See section 44, p. 172, *ante*, and particularly note (i) to that section

(l) **"Regulations".**—As to the making of regulations, see section 112, p. 254, *post*.

(m) **"Certificates of exemption".**—As to the use of such certificates in legal proceedings, see subsection (5) of this section

(n) **"County colleges".**—See section 43, p. 171, *ante*, and especially note (e) to that section.

(o) **"In the prescribed form".**—"Prescribed", as used here and later in this subsection, by section 114 (1), p 285, *post*, means prescribed by regulations made by the Minister.

46. Enforcement of attendance at county colleges.—(1) Any person guilty of an offence against either of the last two foregoing sections (a) shall be liable on summary conviction (b), in the case of a first offence against that section to a fine not exceeding one pound, in the case of a second offence against that section to a fine not exceeding five pounds, and in the case of a third or subsequent offence against that section to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment. [360]

(2) It shall be the duty (c) of the local education authority (d) in whose area the young person (e) in question resides to institute proceedings for such offences as aforesaid wherever, in their opinion, the institution of such proceedings is expedient, and no such proceedings shall be instituted except by or on behalf of a local education authority. [361]

(3) If, in furnishing any information for the purposes of either of the last two foregoing sections, any person makes any statement which he knows to be false in any material particular, or recklessly makes any statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment. [362]

(4) Without prejudice to the provisions of any enactment or rule of

law relating to the aiding and abetting of offences, if the parent (f) of a young person or any person by whom a young person is employed or the servant or agent of any such person has conducted to (g) or connived at any offence committed by the young person against either of the last two foregoing sections, the person who has conduced to or connived at the offence shall, whether or not any person is proceeded against or convicted in respect of the offence conduced to or connived at, be guilty of the like offence (h) and punishable accordingly. [363]

NOTES

This section, together with sections 41–45, pp. 164 to 176, *ante*, and 47, p. 178, *post*, is discussed in the general note to section 41, p. 164, *ante*.

(a) **"An offence against either of the last two foregoing sections".**—See section 44 (9), p. 173, *ante* (failure of young person to comply with any requirement of a college attendance notice) and section 45 (1), p. 176, *ante* (failure of young person or employer to notify addresses and changes of address).

(b) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881; *ibid.* 352. See section 11 of the Act of 1848 as to the limitation of time for summary proceedings.

(c) **"It shall be the duty".**—Where the performance of a duty is, as here, made contingent upon the opinion of the authority, the Minister may, under section 68, p. 205, *post*, give such directions as he thinks expedient to prevent any unreasonable action by a local education authority. Since the duty is contingent upon the opinion of the authority, the power of enforcement under section 99, p. 237, *post*, is not available to the Minister.

(d) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(e) **"Young person".**—See note (f) to section 43, p. 172, *ante*.

(f) **"Parent".**—By section 114 (1), p. 255, *post*, "parent", in relation to any young person, includes a guardian and any person who has the actual custody of the young person.

(g) **"Has conduced to".**—In the opinion of Lord Campbell, C.J., in *Cunnington* v. *Cunnington Noble* (1859), 28 L. J. (P. & M.), 102; 27 Digest 357, *3423* "what has 'conduced to' an effect must in some sense have caused it or contributed to it".

(h) **"Be guilty of the like offence".**—Any such person will be entitled to the benefit to the same forms of defence as are available to the young person—see paragraphs (*a*), (*b*) and (*c*) of section 44 (9), p. 174, *ante*.

47. Interim provisions as to further education.—Until the date upon which a scheme of further education (a) is first approved by the Minister (b) for the area of a local education authority (c) under the foregoing provisions of this Part of this Act, the authority shall (d), unless the Minister otherwise directs (e), continue to maintain (f) or assist (g) any school (h) or other educational institution (i) which, immediately before the date of the commencement of this Part of this Act (k), was maintained or assisted by them or by the council of any county district (l) within their area, under the powers conferred by section seventy of the Education Act, 1921 (m), not being a school or institution which under this Act is maintained or assisted as a secondary school (n), and may, in accordance with arrangements approved by the Minister, provide such additional facilities for further education (o), other than education at county colleges (p), as appear to the authority to be expedient for meeting the needs of their area. [364]

NOTES

This section, together with sections 41–46, pp. 164 to 177, *ante*, is discussed in the general note to section 41, p. 164, *ante*.

(a) **"Scheme of further education".**—See section 42, p. 170, *ante*.

(b) **"First approved by the Minister".**—See section 42 (2), p. 170, *ante*.

(c) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(d) **"The authority shall".**—As to the enforcement of this duty, see section 99 (1), p. 237, *post*.

(e) **"Unless the Minister otherwise directs".**—As to the revocation or variation of such a direction, see section 111, p. 254, *ante*.

(f) **"Maintain".**—Section 114 (1), p. 255, *post*, provides in relation to any school that this word has the meaning assigned to it by subsection (2) of that section, which (as regards any school to which this section applies) enacts that for the purposes of the Act the duty of a local education authority to maintain a school is to include the duty of defraying all the expenses of maintaining the school; and "maintain" is to be construed accordingly.

(g) **"Assist".**—Section 114 (1), p. 255, *post*, provides, in relation to any school, college, or institution, that this word had the meaning assigned to it by subsection (2) of that section, which (as regards schools to which this section applies) enacts that for the purposes of this Act where a local education authority makes to the proprietor of any school which is not maintained by the authority or to the persons responsible for the maintenance of any training college or

other institution which is not so maintained, any grant in respect of the school, college or other institution or any payment in consideration of the provision of educational facilities thereat, the school, college or institution shall be deemed to be assisted by the authority

(h) **"Any school".**—*By section 114 (1), p. 255, post,* "school" means an institution for providing primary or secondary education or both primary and secondary education being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school

(i) **"Other educational institution".**—This term is not defined; other types of educational institutions referred to in the Act (other than county colleges, which did not exist prior to the commencement of this Part of the Act) include colleges and other establishments for the training of teachers (section 62, p. 198, *post*), universities and university colleges (section 84, p. 221, *post*). Compare the definition of "educational establishment" in section 77, p. 213, *post*. *Inter alia*, continuation schools, technical, commercial and art schools maintained or assisted prior to 1st April, 1945, by the local education authority will fall within the scope of this section

(k) **"Immediately before the commencement of this Part of this Act".**—By section 119, p. 267, *post*, Part II of the Act comes into force on 1st April, 1945.

(l) **"Any county district".**—*This term here refers only to the councils of non-county* boroughs and urban districts, since no powers were given to the councils of rural districts by section 70 of the Education Act, 1921; 7 Halsbury's Statutes 168. It is by virtue of this provision that any schools or institutions of the types to which this section applies, which were established or maintained by the council of a county district under that section, are transferred to the local education authority. Compare section 9 (2) and (3), p. 100, *ante*, which relate (*inter alia*) to the transfer of schools from authorities formerly local education authorities for elementary education. As to the transfer of property and officers, see section 6 (3) and (4), p. 87, *ante*, and as to the settlement of questions arising and the making of adjustments, see section 96, p. 231, *post*.

(m) **"Section seventy of the Education Act, 1921".**—This section gave a general power to the local education authority for higher education to supply or aid the supply of higher education, and a limited power to the council of a non-county borough or urban district. Since, by section 114 (8), p. 258, *post*, references to an enactment are to be construed as references to that enactment as amended by a subsequent enactment, the reference here to section 70 of the 1921 Act; 7 Halsbury's Statutes 168, is to that section as amended by sections 75 and 137 of and the Twelfth Schedule, Part VI, to the Local Government Act, 1929; 10 Halsbury's Statutes 932, 974, 1017.

(n) **"Secondary school".**—By section 114 (1), p. 255, *post*, the term means, subject to the provisions of subsection (3) of that section, a school for providing secondary education (which is itself defined in section 8, p. 97, *ante*, as full time education suitable to the requirements of senior pupils, other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of the Act relating to further education). Though, as a result of this section and section 9, p. 100, *ante*, schools formerly maintained by a local education authority for elementary education are transferred to the local education authority under this Act, it may on occasion be difficult to determine whether they become secondary schools under section 9, *supra*, or schools to which this section applies. Normally, however, a school which has catered partly for senior pupils and partly for adults, *e.g.*, an art school, will fall within the scope of this section since the education which it has provided for senior pupils will not have been full-time education.

(o) **"Additional facilities for further education".**—The term "further education" is defined in section 41, p. 164, *ante*, as—

(*a*) full-time and part-time education for persons over compulsory school age; and

(*b*) leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons who are over compulsory school age who are able and willing to profit by the facilities provided for that purpose.

The duties imposed by that section only relate to facilities for further education provided in accordance with schemes of further education under section 42, p. 170, *ante*, and at county colleges under section 43, p. 171, *ante*. Pending the approval of a scheme of further education, therefore, the powers given by this section are the only powers given by the Act, enabling a local education authority to provide facilities for further education in addition to those existing immediately before 1st April, 1945.

(p) **"County colleges".**—See section 43, p. 171, *ante*, and especially note (e) to that section.

SUPPLEMENTARY PROVISIONS AS TO PRIMARY, SECONDARY AND FURTHER EDUCATION

Ancillary Services

48. Medical inspection and treatment of pupils.—(1) It shall be the duty (a) of every local education authority (b) to provide for the medical inspection (c), at appropriate intervals (d), of pupils (e) in attendance at any school (f) or county college (g) maintained (h) by them and every local education authority shall have power to provide for such inspection of senior pupils (i) in attendance at any other educational establishment maintained by them (j). **[365]**

(2) For the purpose of securing the proper medical inspection of the pupils in attendance at any such school, college or other educational establishment, any officer (k) of a local education authority authorised in that behalf by the authority (l) may require the parent (m) of any pupil in attendance at any such school to submit the pupil for medical inspection in accordance with

arrangements made by the authority, and may require any pupil in attendance at a county college or other educational establishment maintained by the authority to submit to such medical inspection; and any person who fails without reasonable excuse to comply with any such requirement shall be liable on summary conviction (n) to a fine not exceeding five pounds. [366]

(3) It shall be the duty of every local education authority to make such arrangements for securing the provision of free medical treatment (o) for pupils in attendance at any school or county college maintained by them as are necessary for securing that comprehensive facilities for free medical treatment are available to them either under this Act or otherwise (p), and every local education authority shall have power to make such arrangements as aforesaid with respect to senior pupils in attendance at any other educational establishment maintained by them. [367]

(4) It shall be the duty of every local education authority to make arrangements for encouraging and assisting pupils (q) to take advantage of such facilities as aforesaid:

Provided that if the parent of any pupil gives to the authority notice (r) that he objects to the pupil availing himself of any medical treatment provided under this section the pupil shall not be encouraged or assisted so to do. [368]

(5) A local education authority may give directions (s) to the managers or governors (t) of any voluntary school (u) requiring them to provide such reasonable facilities as may be specified in the directions for the purpose of enabling the authority to carry out their functions under this section so, however, that the managers or governors of a voluntary school shall not be required by any such directions to incur expenditure. [369]

NOTES

This section replaces sections 80 and 81 of the Education Act, 1921; 7 Halsbury's Statutes 174, 175.

Prior to 1st April, 1945, it was the duty of every local education authority to provide for the medical inspection of all children and young persons in public elementary schools, in secondary schools provided by the authority and in certain other schools (Education Act, 1921, section 80 (1); 7 Halsbury's Statutes 174). The obligation of local education authorities to make arrangements for the medical treatment of the children extended only to children in public elementary schools (*ibid.*), though power was given (subject to the approval of the Minister of Health) to make similar arrangements in the case of other children and young persons subject to medical inspection (*ibid.*, section 80 (2); 7 Halsbury's Statutes 174), and to provide for the medical inspection and treatment of children and young persons attending any other school or educational institution if requested by the persons having the management thereof (*ibid.*, section 80 (3); 7 Halsbury's Statutes 175).

Wherever a local education authority provided, under section 80 of the 1921 Act; 7 Halsbury's Statutes 174, for the medical treatment of such children, even where the provision of medical treatment was obligatory, the authority was by section 81 of that Act required to recover the cost of the treatment from the parent, unless satisfied that it would have been unreasonable to do so.

The White Paper on Educational Reconstruction (Cmd. 6458 of 1943) stated, at p. 24:—

> " The provision made by the local education authorities varies considerably from area to area. In some few areas it includes only treatment for defects to teeth, eyes, ears, nose and throat and for minor ailments; in others it extends to orthopædic treatment, certain forms of chronic as distinct from acute illnesses, the supervision and convalescent treatment of rheumatism and its effects, and the treatment of maladjusted children through child guidance clinics or otherwise.
>
> The setting-up of a comprehensive national health service will eventually ensure that all forms of treatment which schoolchildren require will be available for them through that service. When this stage is reached it will no longer be necessary for local education authorities to provide treatment, and their functions will be confined to providing medical inspection and seeing that the children and parents are properly advised and encouraged to seek through the new health channels any treatment the children may need. Pending the completion of the new service it will be necessary for local education authorities to continue their present provision and indeed to provide additional facilities for treatment. It is proposed, therefore, to make it the duty of local education authorities to provide for the medical inspection of all children and young persons attending grant-aided schools and to take such steps as may be necessary to ensure that those found to be in need of treatment, other than domiciliary treatment, shall receive it. No charge will be made for medical treatment for any of these children or young people ".

Some time after the publication of the above-mentioned White Paper, the Minister of Health issued his White Paper on " A National Health Service " (Cmd. 6502 of 1944). Appendix A to the White Paper contains a comprehensive survey of the existing health services, and at pp. 63–64 says in regard to the school medical services:—

> **" The health of the school child.**—For the school child, over the age of five, or from the time of his first attending school, there has gradually developed during the present century

a special school medical service. Towards the end of the nineteenth century certain special provision was made for the care of blind, deaf, defective and epileptic children; but the origin of the school medical service may be traced directly to the report of the Inter-departmental Committee on Physical Deterioration which was issued a few years after the South African War. As a result of this report the Education (Administrative Provisions) Act was passed in 1907 setting up a regular system of medical inspection and empowering authorities to provide certain types of treatment. From then onwards, a system of increasing medical inspection and care of the health of the school child has been steadily built up. It is now based mainly on the provisions of the Education Act of 1921 and is one of the subjects falling within the scope of the Education Bill now before Parliament.

The operations of the present school medical service are broadly of three kinds. First, it provides for the regular medical inspection of all children in public elementary schools, in secondary schools, and in certain other schools. Second, it provides for the medical treatment, as well as inspection, of children in public elementary schools—but in regard to other schools there is *no obligation (only a power) to provide treatment.* Third, it enables the educational system, with its regular contact with parent and child, to influence both in principles of healthy child life, and to assist and guide them in securing that the child resorts to the kinds of medical treatment or care that it may need. The first and last of these functions are essentially aspects of the educational system, as such, and it is the second—personal medical treatment—that is of most interest for the purpose of the present review.

Responsibility for arranging this medical treatment rests with the local education authorities. There are at the moment, for elementary education, 315 of these, and they include counties and county boroughs and certain non-county boroughs and urban districts; for higher education, there are 146 of these, all counties and county boroughs. The present provision made by local education authorities for medical treatment varies considerably—in some areas dealing only with the treatment of teeth, eyes, ears, nose and throat, and minor ailments; in others extending to such matters as orthopaedic treatment and certain provision for rheumatic cases and for maladjusted children. The authorities are required to recover the cost of treatment from the parents, unless they are satisfied that this would not be reasonable. Some of the treatment activities are conducted in the schools themselves, some at clinics, provided for the purpose by the local education authorities, some by arrangements made between these authorities and hospitals or other independent agencies.

The local education authorities' organisation for these purposes includes school medical officers, whole time or part time, the chief of whom is in nearly all cases also the medical officer of health of the local authority concerned and combines his school functions with his general public health duties; it also includes school nurses, who are able to do much of the follow-up work in direct contact with the home and the parents (and who may combine their duties with those of a health visitor) and school dentists and other technical officers. A valuable activity of the education authorities, side by side with this medical work, is the provision of good school meals and extra nourishment. This has been greatly expanded since the beginning of the present war, is no longer limited (as it was in earlier days) to children whose parents are necessitous or who cannot readily get to their homes at midday, and *will* remain an important feature in the proposed educational reorganisation.

The central supervision of the school medical service rests with the Board of Education, under powers delegated by the Ministry of Health and a close association of its work with general public health policy is assured by the two Departments enjoying the services of a single Chief Medical Officer, and by regular arrangements made through him for the co-ordination of the medical work at the centre in both fields.

The main part of the White Paper shows how it is proposed to incorporate the school medical service within the scope of the general health services. At p. 10 it is stated —

> "It should be the part of any school medical arrangements to refer the school child for any and every form of personal doctoring to the general health service—the family doctor and other resources which that service will provide. But that does not mean that as an integral part of the educational organisation the education authorities should not have their own arrangements for looking after medical and welfare conditions in the schools, for maintaining inspection and supervision of the child in the school group, and indeed for providing, until the new health service is fully developed, such forms of treatment as may be needed by the children and may not otherwise be available for them".

Later, at p. 39, it is stated in relation to the School Medical Service, that :—

> ". . . the proposals need to be related to the proposals in the current Education Bill. The conception underlying both the Bill and the present Paper is that the education authorities will retain as part of their educational machinery the functions of inspection of *children in the school group (the supervision, in fact, of the state of health in which the child* attends school and of the effects of school life and activities on the child's health), together with the important function of using the influence of the school and the teacher and the whole school relationship with child and parent to encourage the recourse of the child to all desirable medical treatment. But, *as from the time when the new health service is able to* take over its comprehensive care of health, the child will look for its treatment to the organisation which that service provides—and the education authority, as such, will give up responsibility for medical treatment".

The present section may be regarded, therefore, to some extent as provisional in nature, to be replaced when the proposed general health services are brought into operation.

In fulfilment of the undertaking given by the President of the Board of Education in the White Paper on Educational Reconstruction (*supra*), the present section imposes upon local education authorities the duty of providing for the medical inspection and treatment of all children and young persons attending maintained schools and county colleges and of taking such steps as may be necessary to ensure that those found to be in need of treatment, other than domiciliary treatment, receive it free of cost.

In addition, power is given to provide for the medical inspection and treatment of senior pupils in attendance at any other educational establishment maintained by the local education authority.

Under the Education Act, 1921, the arrangements for the control of local education authorities in relation to these matters were in the hands of the Minister of Health (being transferred to

him by the Ministry of Health Act, 1919, section 3 (1) (*d*), which was replaced by the Education Act, 1921, section 118 (6); 7 Halsbury's Statutes 194), though he was empowered to make arrangements for the payment of grants to local education authorities in respect of medical inspection and treatment by the Board of Education on his behalf. Under the present Act the Minister of Health remains responsible (section 100 (2), p. 239, *post*), for the payment of grants in aid of medical inspection and treatment under this section and similar power is given to enable the functions of the Minister of Health in relation thereto to be exercised by the Minister of Education by arrangement between them. By section 100 (3), p. 239, *post*, grant regulations made by either Minister may require the fulfilment of conditions. Furthermore, specific power to enforce the discharge by a local education authority of its functions is given by section 79, p. 217, *post*, to the Minister of Health, or, if arrangements to that end are made, by the Minister of Education. In consequence the execution of the duties of local education authorities under this section may, theoretically at any rate, be enforced by the Minister of Education under section 99 (1), p. 237, *post*, or by either the Minister of Education or the Minister of Health by means of directions given under section 79, *supra*, or by means of regulations made under section 100 (2) and (3), *supra*.

(a) "**It shall be the duty**".—See sections 79, p. 217, *post*, 99 (1), p. 239, *post*, and 100 (2) and (3), p. 239, *post*, and the general note to this section.

(b) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(c) "**Medical inspection**".—By section 114 (1), p. 255, *post*, this term means inspection by or under the directions of a medical officer of a local education authority or by a person registered under the Dentists Act, 1878; 11 Halsbury's Statutes 679, employed or engaged, whether regularly or for the purposes of any particular case, by a local education authority. The medical inspection of children and young persons under this section is in addition to any examination which may be required under any other provision of the Act, *e.g.*, section 34, p. 154, *ante*. By section 69, p. 205, *post*, the Minister is enabled to make regulations as to the conduct of (*inter alia*) medical inspections for the purposes of the Act. These regulations may (*inter alia*) make provision requiring that any class of such inspections shall be conducted by duly qualified medical practitioners having such special qualifications or experience as may be prescribed, or shall be conducted by a duly qualified medical practitioner selected with the approval of the Minister. It would appear, therefore, that the Minister may compel the authority to seek his approval to the appointment of any medical officer who is to conduct medical inspections under the Act.

(d) "**At appropriate intervals**".—Under section 80 of the Education Act, 1921; 7 Halsbury's Statutes 174, provision was to be made for the medical inspection of children and young persons immediately before, or at the time of, or as soon as possible after, their admission to school or educational institution, and on such other occasions as the Minister of Health might direct. Now, the present section merely specifies that provision must be made for medical inspections "at appropriate intervals", but either the Minister of Health or the Minister of Education may determine the length of such intervals by means of the regulations which one or other of them is required to make under section 100 (2), p. 239, *post* (see subsection (3) of that section).

(e) "**Pupils**".—By section 114 (1), p. 255, *post*, where used without qualification, "pupil" means a person of any age for whom education is required to be provided under this Act. Consequently, provision is to be made for all pupils from the age of two years upwards and this will extend throughout the school life of every child and young person until he leaves school whether on attaining the upper limit of compulsory school age or later. In addition when county colleges are established similar provision will have to be made for all young persons up to the age of eighteen who are not exempt from compulsory attendance at such colleges.

(f) "**Any school**".—As used in this section, "school" means an institution for providing primary or secondary education or both primary and secondary education being a school maintained by the local education authority (section 114 (1), p. 255, *post*. In addition to the duties imposed by this subsection, every local education authority is given the following additional powers by the Act:—

(1) to provide for the medical inspection of any child or young person for whom special arrangements are made under section 56, p. 191, *post*, to receive primary or secondary education otherwise than at school as if he were in attendance at a school maintained by the authority (section 78 (1), p. 216, *post*); and

(2) with the consent of the proprietor of any school or other educational establishment in its area which is not maintained by the authority and upon such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school or establishment, to make arrangements for securing the medical inspection of junior or senior pupils in attendance at the school or establishment.

(g) "**County college**".—As to the definition and provision of county colleges, see section 43, p. 171, *ante*, and as to persons who are exempt from compulsory attendance at county colleges, see section 44 (8), p. 174, *ante*.

(h) "**Maintained**".—Section 114 (1), p. 255, *post*, provides, in relation to any school or county college, that the word "maintain" has the meaning assigned to it by subsection (2) of that section, which enacts that for the purposes of the Act the duty of a local education authority to maintain a school or county college shall include the duty of defraying all the expenses of maintaining the school or college except, in the case of an aided school or a special agreement school, any expenses that by virtue of any provision of the Act or of any special agreement made thereunder are payable by the managers or governors of the school; and the expression "maintain" is to be construed accordingly.

(i) "**Senior pupils**".—By section 114 (1), p. 255, *post*, "senior pupil" means a person who has attained the age of twelve years but has not attained the age of nineteen years but, by section 114 (5), p. 258, *post*, a person in attendance at a school or county college who attains any age during the term of the school or college shall, for the purposes of the Act, be deemed not to have attained that age until the end of the term.

(j) "**Any other educational establishment maintained by them**".—Elsewhere in the Act, *e.g.*, sections 43, 44 and 47, pp. 171, 172 and 178, *ante*, the term "educational institution" has been used in circumstances similar to those in which "educational establishment" is used

in this section. The latter term is, however, used in section 77, p. 213, post, and is specially defined for the purposes of that section only. For those purposes it means a school, a county college, any establishment which under a scheme of further education made and approved under this Act is used for further education, and any training college or other institution maintained by a local education authority. In this section the term will probably include establishments of all the types referred to in the above-mentioned definition, subject to the qualification that they are maintained by the local education authority; that definition, however, apparently does not cover educational institutions other than schools to which section 47, p. 178, *ante*, applies, and the term as used in this section will presumably also apply to them. It may be, however, that the word "establishment" was deliberately chosen in preference to "institution", since pupils attending institutions provided by the council of a county district under section 70 of the Education Act, 1921; 7 Halsbury's Statutes 168, were not subject to medical inspection under section 80, *ibid.*; 7 Halsbury's Statutes 174, because that section applied only to public elementary schools provided by a local education authority for elementary education and to secondary and certain other schools and institutions provided by a local education authority for higher education Though the council of a county district had certain powers of higher education under section 70 (2), *ibid.*; 7 Halsbury's Statutes 168, it was not a higher education authority under the Act (section 3 (2), *ibid.*; 7 Halsbury's Statutes 121). The position, therefore, is one of some doubt.

(k) **"Officer".**—See note (q) to section 6, p. 92, *ante*.

(l) **"Authorised in that behalf by the authority".**—The authorisation should be by resolution of the authority, but it would appear that authority may be given, if desired, to a specified class of officers or to the holder for the time being of a particular office.

(m) **"Parent".**—By section 114 (1), p. 255, *post*, this expression, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(n) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881, *ibid.* 352. *See section 11 of the Act of 1848, ibid* 278, as to the limitation of time for summary proceedings.

(o) **"Free medical treatment".**—By section 114 (1), p. 255, *post*, this term includes treatment by any duly qualified medical practitioner or by any person registered under the Dentists Act, 1878; 11 Halsbury's Statutes 679, but does not, in relation to any pupil other than a pupil receiving primary or secondary education otherwise than at school under arrangements made by a local education authority, include treatment in that pupil's home The provisions of section 81 of the Education Act, 1921; 7 Halsbury's Statutes 175, with regard to the recovery of the cost of medical treatment are thus not re enacted—see the general note to this section. As in the case of medical inspections (see note (f), *ante*), medical treatment, in addition to that required to be provided under this subsection, may be given :—

(*a*) free of charge, to any child or young person for whom special arrangements are made under section 56, p. 191, *post*, to receive primary or secondary education otherwise than at school as if he were in attendance at a school maintained by the authority (section 78 (1), p. 216, *post*); and

(*b*) with the consent of the proprietor of any school or other educational establishment in its area which is not maintained by the authority and upon such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school or establishment, to junior or senior pupils in attendance at the school or establishment.

(p) **"Are available to them either under this Act or otherwise."**—The words "or otherwise" in this phrase will cover the situation which will arise when arrangements are completed for the provision of a comprehensive health service for all (see the general note to this section).

(q) **"Arrangements for encouraging and assisting pupils".**—Though the local education authority must provide for medical treatment for pupils in attendance at any school or county college maintained by the authority and may require the submission of a pupil for medical inspection, it is still no part of the national policy to require that a pupil shall take advantage of any free treatment offered in preference to any other treatment which the parent or, in the case of a pupil at a county college, the pupil, may desire. In fact, by the proviso to this subsection, a parent may if he wishes require the authority to refrain from encouraging or assisting the pupil to take advantage of the facilities offered.

(r) **"Notice".**—As to the service of notices, see section 113, p 254, *post*.

(s) **"Directions".**—As to the variation or revocation of such directions, see section 111, p. 254, *post*, and as to the enforcement of any such directions, see section 99, p. 237, *post*.

(t) **"Managers or governors".**—See note (d) to section 17, p. 122, *ante*

(u) **"Voluntary school".**—See sections 9 (2) and 15, pp. 100 and 113, *ante*.

49. Provision of milk and meals.—Regulations (a) made by the Minister shall impose upon local education authorities (b) the duty of providing (c) milk, meals and other refreshment for pupils (d) in attendance at schools (e) and county colleges (f) maintained by them (g); and such regulations shall make provision as to the manner in which and the persons by whom the expense (h) of providing such milk, meals or refreshment is to be defrayed, as to the facilities to be afforded (including any buildings or equipment to be provided) and as to the services to be rendered by managers, governors (i) and teachers (k) with respect to the provision of such milk, meals or refreshment, and as to such other consequential matters as the Minister considers expedient, so, however, that such regulations shall not impose upon teachers at any school or college duties upon days on which the school or college is not

open for instruction, or duties in respect of meals other than the supervision of pupils, and shall not require the managers or governors of a voluntary school (l) to incur expenditure. [370]

NOTES

This section replaces sections 82–85 of the Education Act, 1921 ; 7 Halsbury's Statutes 175, 176.

The proper feeding of the children is regarded by the Ministry of Education as being no less important than their medical inspection and treatment.

In its origin the power to provide school meals which was first entrusted to local education authorities by the Education (Provision of Meals) Act, 1906, was designed to prevent the value of education being lost through the inability of children to profit from it through insufficiency of food, and, until as late as the beginning of the war, school meals were provided mainly for under-nourished children whose parents were necessitous, and for those who found it difficult or impossible to get back to their homes at mid-day. Since the outbreak of the present war the school meals service has been greatly expanded in order to ensure that even with food rationing the health and nutrition of the younger generation have been fully maintained, and to meet the situation created by the large scale employment of married women in war work The rapid development of this work has been pressed forward and facilitated by the decision to provide accommodation and equipment without any charge to local funds, which was announced in Board of Education Circular No. 1629 of 15th May, 1943.

The Milk in Schools Scheme, which came into operation in 1934, whereby children can get milk daily at a cost of a half-penny for one-third of a pint, or free in cases of poverty, has also been very valuable in underpinning the physical well-being of the children.

As stated in the White Paper on Educational Reconstruction (Cmd. 6458 of 1943), the extension of both these services will follow from the conversion of the present power to provide school meals and milk into a duty. The Explanatory Memorandum issued with the Bill (Cmd. 6492 of 1943) explained that the reason for not defining this duty, as it appears in the present section, more closely was that the position in regard to the provision of meals and milk would have to be considered in detail in connection with the scheme for children's allowances.

(*a*) "**Regulations**".—*As to making of regulations under the Act, see section 112, p. 254, post.*

(b) "**Local education authorities**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(c) "**The duty of providing**".—As to the enforcement of this duty, see section 99, p. 237, *post*. It replaces the former power to provide meals which was given by section 82 of the Education Act, 1921 ; 7 Halsbury's Statutes, in respect of elementary school children.

(*d*) "**Pupils**".—*See note (e) to section 48, p. 182, ante.*

(e) "**Schools**".—By section 114 (1), p. 255, *post*, the term as here qualified means institutions for providing primary or secondary education or both primary and secondary education, being schools maintained by a local education authority. As regards schools not maintained by the authority, section 78 (2), p. 216, *post*, empowers the local education authority, with the consent of the proprietors of the schools, and upon such financial and other terms, if any, as may be agreed, to make similar arrangements to those contemplated by this section for the pupils in attendance at such schools, subject, however, to a proviso that, so far as practicable, *the cost to the authority shall not exceed the cost of making similar provision* for pupils at schools maintained by the authority.

(f) "**County colleges**".—As to the definition and provision of county colleges, see section 43, p. 171, *ante*.

(g) "**Maintained by them**".—As to the meaning of this term, see sections 114 (1) and (2), p. 255, *post*

(h) "**The expense of providing such milk meals or refreshment**".—As to the previous statutory provisions relating to payment for meals, see sections 83 and 84 of the Education Act, 1921 ; 7 Halsbury's Statutes 176.

(i) "**Managers**" and "**governors**".—See note (*d*) to section 17, p. 122, *ante*.

(k) "**Teachers**".—Section 85 of the Education Act, 1921, provided that no teacher was to be required as part of his duties to supervise or assist, or to abstain from supervising or assisting, in the provision of meals, or in the collection of the cost thereof. It will be noted that this principle has now been abandoned, at least in theory.

(l) "**Voluntary school**".—See sections 9 (2) and 15, pp 100 and 113, *ante*.

50. Provision of board and lodging otherwise than at boarding schools or colleges.—(1) Where the local education authority (a) are satisfied with respect to any child (b) that primary or secondary education (c) suitable to his age, ability and aptitude (d) can best be provided by them for him at any particular county school (e), voluntary school (f), or special school (g), or are satisfied with respect to any young person (h) that further education (i) should in his case be provided by requiring his continuous attendance (k) at a county college (l), but that such education cannot be so provided unless boarding accommodation (m) is provided for him otherwise than at the school or college, the authority may provide such board and lodging for him under such arrangements as they think fit. [371]

(2) *In making any arrangements under this section for any child or young person, a local education authority shall, so far as practicable, give effect to the wishes of the parent (n) of the child or to the wishes of the young*

person, as the case may be, with respect to the religious denomination (o) of the person with whom he will reside. [372]

NOTES

This section replaces and extends section 23 of the Education Act, 1921; 7 Halsbury's Statutes 140, which, however, only authorised the local education authority (for elementary education) to provide board and lodging for children who were not in a position to receive the full benefit of education by means of the ordinary provision made for the purpose by the authority by reason of the remoteness of their homes or the conditions under which they were living, or other exceptional circumstances affecting the children. It also replaces part of section 56 of that Act, as regards board and lodging for defective and epileptic children.

(a) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*

(b) "**Child**".—This expression means a person who is not over compulsory school age (section 114 (1), p. 255, *post*).

(c) "**Primary or secondary education**".—By section 114 (1), p. 255, *post*, "primary education" and "secondary education" have the meanings assigned to them by section 8, p. 97, *ante*.

(d) "**Suitable to his age, ability and aptitude**".—See note (n) to section 8, p. 98, *ante*.

(e) "**County school**".—See section 9 (2), p. 100, *ante*.

(f) "**Voluntary school**".—See sections 9 (2), p. 100, *ante*, and 15, p. 113, *ante*.

(g) "**Special school**".—See sections 9 (5), p. 100, *ante*, and 33, p. 151, *ante*.

(h) "**Young person**".—By section 114 (1), p. 255, *post*, this expression means a person over compulsory school age who has not attained the age of eighteen years (but see also section 114 (5), p. 258, *post*).

(i) "**Further education**".—By section 114 (1), p. 255, *post*, this term has the meaning assigned to it by section 41, p. 164, *ante*.

(k) "**Continuous attendance**".—As to the circumstances in which and the extent to which continuous attendance may be required, see section 44 (3), p. 172, *ante*.

(l) "**County college**".—As to the definition and provision of county colleges, see section 43, p. 171, *ante*.

(m) "**Boarding accommodation**".—As to the recovery of the cost of providing such board and lodging, see section 52, p. 186, *post*. The general duty of securing the provision of boarding accommodation in relation to primary and secondary schools, whether in board schools or otherwise, is imposed by section 8 (2) (*d*), p. 97, *ante*, whilst section 11 (2) (*f*), p. 104, *ante*, requires the local education authority to give particulars in the development plan for the area of the arrangements made and proposed to be made by the authority for the provision of boarding schools, though not of other boarding accommodation contemplated by this section.

(n) "**Parent**".—Section 114 (1), p. 255, *post*, defines this expression, in relation to any child, as including a guardian and every person who has the actual custody of the child.

(o) "**Religious denomination**".—This subsection replaces and substantially re-enacts the proviso to section 23 of the Education Act, 1921; 7 Halsbury's Statutes 141.

51. Provision of clothing at schools maintained by local educational authorities.—Where it appears to a local education authority (a) that a registered pupil (b) at any school (c) maintained by them (d) is unable by reason of the inadequacy of his clothing (e) to take full advantage of the education provided at the school, the authority may provide him with such clothing as, in the opinion of the authority, is necessary for the purpose of ensuring that he is sufficiently clad while he remains a pupil at the school. [373]

NOTES

The White Paper on Educational Reconstruction (Cmd. 6458 of 1943) stated, at p. 25 —

"There are still many children, especially in the large towns, who are inadequately clothed or shod and voluntary funds no longer suffice to meet this need. Local education authorities will, therefore, be empowered to supply or aid the supply of clothing and footwear for children and young persons attending grant-aided schools (nursery, primary, secondary and special schools), provided they recover the cost in whole or in part from those parents who can afford to pay The position in England and Wales will thus be brought into line with that in Scotland"

The power given by this section is given for the first time to local education authorities in England and Wales, subject to the recovery, under section 52, p. 186, *post*, of the cost from parents who are able to pay.

(a) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) "**Registered pupil**".—Section 114 (1), p. 255, *post*, defines this term in relation to any school as a pupil (also defined in the section) registered as such in the register kept by the managers, governors or proprietor of the school in accordance with the requirements of the Act (see section 80, p. 218, *post*), but does not include any child who has been withdrawn from the school in the prescribed manner (section 80 (3), *ibid.*).

(c) "**School**".—By section 114 (1), p. 255, *post*, this term, as here qualified, means an institution for providing primary or secondary education or both primary and secondary education, being schools maintained by a local education authority. As regards schools not maintained by the local education authority, section 78 (2), p. 216, *post*, empowers the local education authority, with the consent of the proprietor of the school, and upon such financial and other terms, if any, as may be agreed, to make similar arrangements to those contemplated by this section, for the provision, for any registered pupil unable by reason of the inadequacy of his

clothing to take full advantage of the education provided, of such clothing as is necessary to ensure that he is sufficiently clad whilst a pupil at the school The proviso to section 78 (2), *supra* requires that, so far as practicable, the cost to the authority is not to exceed the cost of making similar provision for pupils at schools maintained by the authority

(d) **"Maintained by them".**—As to the meaning of this term, see sections 114 (1) and (2), p 255, *post*

(e) **"Clothing".**—By section 114 (1), p 255, *post*, this word includes boots and other footwear

52. Recovery of cost of boarding accommodation and of clothing.—(1) Where a local education authority (a) have, under the powers conferred by the foregoing provisions of this Act (b), provided a pupil (c) with board and lodging (d) otherwise than at a boarding school or college, or with clothing (e) the authority shall require (f) the parent (g) to pay to the authority in respect thereof such sums, if any, as in the opinion of the authority he is able without financial hardship to pay

Provided that—

(*a*) where the board and lodging provided for the pupil were so provided under arrangements made by the local education authority on the ground that in their opinion education suitable to his age ability and aptitude (h) could not otherwise be provided by the authority for him, no sum shall be recoverable in respect thereof under this section, and

(*b*) where the board and lodging have been so provided for a pupil in attendance at a county college (i), the authority, if satisfied that the pupil is in a financial position to pay the whole or any part of a sum recoverable from the parent under this section, may recover that sum or that part thereof from the pupil instead of from the parent [374]

(2) The sums recoverable under this section shall not exceed the cost to the local education authority of providing the board and lodging, or the cost of the clothing provided, as the case may be [375]

(3) Any sums payable by virtue of this section may be recovered summarily as a civil debt (k) [376]

NOTES

See the general notes to sections 50 and 51, pp 184 and 185, *ante* Under the former law relating to the provision of board and lodging for children, section 23 of the Education Act, 1921, 7 Halsbury's Statutes 140, went no farther than to allow the local education authority to enter into such agreement with the parent as the authority thought proper, which, of course, enabled the local education authority to enter into an agreement by which the parent undertook (*inter alia*) to repay the whole or part of the cost of board and lodging The parent was not compelled, however, to enter into an agreement to pay and it might well be that the benefit intended by the section would thereby be lost The present section overcomes this difficulty and applies similar arrangements to the recovery of the cost of clothing provided in accordance with the new power given by section 51, *supra*

(a) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 to 267 *post*

(b) ***"The foregoing provisions of this Act".***—See sections 50 and 51, pp 184 and 185, *ante*

(c) **"Pupil".**—By section 114 (1), p 255, *post*, this term, when used without qualification, means a person of any age for whom education is required to be provided under the Act Here however, the term must be read subject to the qualifications introduced by sections 50 and 51, pp 184 and 185, *ante*

(d) **"Board and lodging".**—See note (m) to section 50, p 185, *ante*

(e) ***"Clothing".***—*See note (e) to section 51, p 186, ante*

(f) **"Shall require".**—Where, as here, the performance by the local education authority of a duty is made contingent upon the opinion of the authority, section 68, p 205, *post*, enables the Minister to give such directions as he thinks expedient to prevent the unreasonable exercise of the duty

(g) **"Parent".**—By section 114 (1), p 255, *post*, this term, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(h) **"Suitable to his age ability and aptitude".**—See note (n) to section 8, p 98, *ante*, and note (b) to section 36, p 157, *ante* This provision means that wherever it is necessary for a pupil to be provided with boarding accommodation otherwise than at a school or college because suitable education cannot otherwise be provided, *e g* within a reasonable distance of his home, no fees may be charged for board and lodging Section 61 (2), p 196, *post*, contains a similar provision with regard to the remission of fees for board and lodging provided at boarding schools or colleges

(i) **"County college".**—See note (l) to section 50, p 185, *ante*

(k) **"May be recovered summarily as a civil debt".**—By section 35 of the Summary Jurisdiction Act, 1879, 11 Halsbury's Statutes 342, any sum declared by the Act or by any

future Act to be a civil debt which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts A warrant is, however, not to be issued for the apprehension of any person for failing to appear to answer any such complaint, nor is the order to be enforced by imprisonment, except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under section 5 of the Debtors Act, 1869 ; 1 Halsbury's Statutes 575 ; see also the Money Payments (Justices Procedure) Act, 1935 ; 28 Halsbury's Statutes 125.

53. Provision of facilities for recreation and social and physical training.—(1) It shall be the duty (a) of every local education authority (b) to secure that the facilities for primary secondary and further education (c) provided for their area include adequate facilities for recreation and social and physical training (d), and for that purpose a local education authority, with the approval of the Minister, may establish maintain (e) and manage, or assist (f) the establishment, maintenance, and management of camps, holiday classes, playing fields, play centres, and other places (including playgrounds, gymnasiums, and swimming baths not appropriated to any school or college), at which facilities for recreation and for such training as aforesaid are available for persons for whom primary secondary or further education is provided by the authority, and may organise games expeditions and other activities for such persons, and may defray or contribute towards the expenses thereof. [377]

(2) A local education authority, in making arrangements for the provision of facilities or the organisation of activities under the powers conferred on them by the last foregoing subsection shall, in particular, have regard to the expediency of cooperating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character. [378]

(3) The Minister may make regulations (g) empowering local education authorities to provide for pupils (h) in attendance at any school (i) or county college (k) maintained by them (l) such articles of clothing (m) suitable for the physical training provided at the school or college as may be prescribed (n). [379]

(4) Sections one and two of the Physical Training and Recreation Act, 1937 (o) (which relate to National Advisory Councils and local committees and sub-committees for the promotion of physical training), and so much of section three of that Act as relates to the grants committee, to recommendations of that committee, and to consultation with such councils as aforesaid, shall cease to have effect. [380]

NOTES

Until 1937 the main powers of a local education authority in relation to the promotion of social and physical training were contained in section 86 of the Education Act, 1921 ; 7 Halsbury's Statutes 177, which enabled local education authorities for elementary and higher education, with the approval of the Board of Education, to make arrangements to supply or maintain or aid the supply or maintenance of—

(a) holiday or school camps ;

(b) centres and equipment for physical training, playing fields (other than ordinary playgrounds of non-provided schools), school baths and school swimming baths ; and

(c) other facilities for social and physical training in the day or evening.

The arrangements which might be made under that section related, in the case of local education authorities for higher education, only to " young persons and persons over the age of eighteen attending schools and educational institutions ". Section 6 of the Physical Training and Recreation Act, 1937 ; 30 Halsbury's Statutes 715, extended the scope of this section by substituting for those words the expression " persons of whatever age ".

In addition, local education authorities for elementary education were empowered by section 22 of the Education Act, 1921 ; 7 Halsbury's Statutes 140, to provide, for children attending public elementary school children, vacation schools, vacation classes, play-centres, or other means of recreation.

The Physical Training and Recreation Act, 1937, also provided for the continuation of the National Advisory Councils for Physical Training and Recreation (section 1, *ibid* , 30 Halsbury's Statutes 712), for the setting-up by the National Council for England and Wales of local committees consisting of persons representing higher education authorities, other local authorities, voluntary organisations and other persons for the purposes of reviewing the existing facilities for physical training and recreation, of directing public interest to its value and of encouraging the promotion of local schemes, and also of examining and forwarding proposals and applications for grant (section 2, *ibid.* ; 30 Halsbury's Statutes 712). Power to make grants was given to the Board of Education by sections 3 and 8, *ibid.* ; 30 Halsbury's Statutes 713, 715

Sections 22 and 86 of the Education Act, 1921 ; 7 Halsbury's Statutes 140, 177, and the

above mentioned provisions of the Physical Training and Recreation Act, 1937, except small parts of sections 3 and 8, *supra*, and except also so far as it applies to Scotland, have been repealed and replaced by this section, which converts the former power enjoyed by local education authorities into a duty The work of the National Advisory Councils and their allied bodies was indefinitely suspended at the outbreak of war and since it was felt that the provision of facilities for recreation and physical training could be more effectively secured in other ways the National Advisory Council for England and Wales has been brought to an end It has, in fact, been thought necessary to make doubly sure of the repeal of these provisions since they are not only repealed, except so far as they extend to Scotland, by section 121, p 270, *post*, and Part I of the Ninth Schedule, p 294 *post*, but subsection (3) of this section also provides that they shall cease to have effect Even this, however, does not entirely carry out the Government's intention as stated at p 10 of the Explanatory Memorandum to the Bill (Cmd 6492 of 1943) which states that subsection (4), *supra*, brings to an end the National Advisory Councils of Physical Training and their allied bodies Under the Physical Training and Recreation Act, 1937 , 30 Halsbury's Statutes 712, there were two councils, one for England and Wales and one for Scotland The repeal effected by section 121, p 270, *post*, and the Ninth Schedule, p 294, *post*, does not extend to Scotland and, though subsection (4) of this section does not of itself limit the repeal, section 122 (2) p 271, *post*, specifically provides that the Act does not extend to Scotland

It is intended that the purposes for which the National Advisory Council for England and Wales and its allied bodies were set up shall be more effectively carried out in the first place by the extended exercise by local education authorities of their duties under subsection (1) of this section and secondly by the provision under section 100 (1) (*b*), p 239, *post*, of direct grants by the Minister to voluntary agencies

Those provisions of the Physical Training and Recreation Act, 1937, which empower local authorities in general to provide facilities for recreative physical training remain in force.

(a) **"It shall be the duty".**—As to the enforcement of this duty, see section 99, p 237, *post*

(b) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(c) **"Primary secondary and further education".**—By section 114 (1), p 255, *post*, primary education and secondary education have the meanings respectively assigned to them by section 8, p 97, *ante*, and further education the meaning assigned to it by section 41, p 164, *ante* The general duties of local education authorities to secure the provision of sufficient schools for providing primary and secondary education are also contained in section 8, *ante*, whilst sections 11 and 12, pp 103 and 107, *ante*, respectively provide for the preparation and submission of development plans for the carrying out of those duties and local education orders imposing specific duties in relation to such plans The general duty of securing the provision of adequate facilities for further education is contained in section 41, *supra*, and sections 42 and 43, pp 170 and 171, *ante*, respectively provide for the submission of schemes of further education (other than at county colleges) and plans for county colleges

(d) **"Adequate facilities for recreation and social and physical training".**—These facilities are more closely defined in the latter part of the subsection

(e) **"Maintain".**—By section 114 (1), p 255, *post*, this expression, in relation to any school or county college, is given the meaning assigned to it by subsection (2) of that section By the same section, "premises", in relation to a school, includes any detached playing fields, but it is not clear how far some of the matters referred to are part of or are related to a school or county college and in relation to such matters the application of the definition of 'maintain" may be of some doubt

(f) **"Assist".**—By section 114 (1), p 255, *post*, this expression, like 'maintain" (see note (e), *supra*), in relation to any school, college or institution, also has the meaning assigned to it by subsection (2) of that section and the remarks in that note are equally applicable

(g) **"Regulations"** —As to the making of regulations, see section 112, p 254, *post*

(h) **"Pupils".**—Subject to the qualifications here used, by section 114 (1), p 255, *post*, this expression means persons of any age for whom education is required to be provided under the Act

(i) **"School".**—By section 114 (1), p 255, *post*, "school", as used in this section, means an institution for providing primary or secondary education or both primary and secondary education being a school maintained by a local education authority

(k) **"County college".**—As to the definition and provision of county colleges, see section 43, p 171, *ante*

(l) **"Maintained by them".**—As to the meaning of this term, see sections 114 (1) and (2), p 255, *post*

(m) **"Articles of clothing".**—By section 114 (1), p 255, *post*, "clothing" includes boots and other footwear

(n) **"Prescribed".**—By section 114 (1), p 255, *post*, this expression means prescribed by regulations made by the Minister

(o) **"Sections one and two of the Physical Training and Recreation Act, 1937", etc.**, 30 Halsbury's Statutes 712 —See also section 121, p 270, *post*, and Part I of the Ninth Schedule, p 294, *post*, and the general note to this section

54. Power to ensure cleanliness.—(1) A local education authority (a) may, by directions in writing (b) issued with respect to all schools maintained by them (c) or with respect to any of such schools named in the directions, authorise a medical officer of the authority (d) to cause examinations of the persons and clothing (e) of pupils (f) in attendance at such schools to be made whenever in his opinion such examinations are necessary in the interests of cleanliness , and if a medical officer of a local education authority has reasonable cause to suspect (g) that the person or clothing of a pupil in attendance at any county college (h) is infested with vermin or in a foul condition, he may cause an examination thereof to be made [381]

(2) Any such examination as aforesaid shall be made by a person authorised by the local education authority to make such examinations, and if the person or clothing of any pupil is found upon such an examination to be infested with vermin or in a foul condition, any officer of the authority may serve upon the parent (i) of the pupil, or in the case of a pupil in attendance at a county college upon the pupil, a notice (k) requiring him to cause the person and clothing of the pupil to be cleansed. [382]

(3) A notice served under the last foregoing subsection shall inform the person upon whom it is served that unless within the period limited by the notice, not being less than twenty-four hours after the service thereof, the person and clothing of the pupil to whom the notice relates are cleansed to the satisfaction of such person as may be specified in the notice the cleansing thereof will be carried out under arrangements made by the local education authority; and if, upon a report being made to him by that person at the expiration of that period, a medical officer of the authority is not satisfied that the person and clothing of the pupil have been properly cleansed, the medical officer may issue an order (l) directing that the person and clothing of the pupil be cleansed under such arrangements. [383]

(4) It shall be the duty (n) of the local education authority to make arrangements for securing that any person or clothing required under this section to be cleansed may be cleansed (whether at the request of a parent or pupil or in pursuance of an order issued under this section) at suitable premises by suitable persons and with suitable appliances; and where the council of any county district (o) in the area of the authority are entitled to the use of any premises or appliances for cleansing the person or clothing of persons infested with vermin, the authority may require the council to permit the authority to use those premises or appliances for such purposes upon such terms as may be determined by agreement between the authority and the council or, in default of such agreement, by the Minister of Health. [384]

(5) Where an order has been issued by a medical officer under this section directing that the person and clothing of a pupil be cleansed under arrangements made by a local education authority, the order shall be sufficient to authorise any officer of the authority to cause the person and clothing of the pupil named in the order to be cleansed in accordance with arrangements made under the last foregoing subsection, and for that purpose to convey him to, and detain him at, any premises provided in accordance with such arrangements. [385]

(6) If, after the cleansing of the person or clothing of any pupil has been carried out under this section, his person or clothing is again found to be infested with vermin or in a foul condition at any time while he is in attendance at a school maintained by a local education authority or at a county college, and it is proved that the condition of his person or clothing is due to neglect on the part of his parent, or in the case of a pupil in attendance at a county college to his own neglect, the parent or the pupil, as the case may be, shall be liable on summary conviction (p) to a fine not exceeding twenty shillings (q). [386]

(7) Where a medical officer of a local education authority suspects that the person or clothing of any pupil in attendance at a school maintained by the authority or at any county college is infested with vermin or in a foul condition, but action for the examination or cleansing thereof cannot immediately be taken, he may, if he considers it necessary so to do either in the interest of the pupil or of other pupils in attendance at the school or college, direct (r) that the pupil be excluded from the school or college until such action has been taken; and such a direction shall be a defence to any proceedings under this Act in respect of the failure of the pupil to attend school (s) or to comply with the requirements of a college attendance notice (t), as the case may be, on any day on which he is excluded

in pursuance of the direction, unless it is proved that the issue of the direction was necessitated by the wilful default of the pupil or his parent. [387]

(8) No girl shall be examined or cleansed under the powers conferred by this section except by a duly qualified medical practitioner or by a woman authorised for that purpose by a local education authority. [388]

NOTES

This section replaces section 87 of the Education Act, 1921; 7 Halsbury's Statutes 177. The terms of the section gave both the Board of Education and the House of Commons considerable trouble when the Bill was before the House, and many alterations were made before it was finally settled.

Under section 87, *supra*, local education authorities for elementary education were empowered to direct their medical officer, or some other person with his authority, to examine the person and clothing of a child in a maintained public elementary school. If the child or clothing was found to be verminous or dirty, written notice might be given to the parent requiring him to cleanse the child and his clothing within twenty-four hours. In the event of failure to comply with such a notice the child might be removed from school and properly cleansed.

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Directions in writing".**—As to the variation or revocation of such directions, see section 111, p. 254, *post*.

(c) **"All schools maintained by them".**—As here qualified, "schools" means, by section 114 (1), p. 255, *post*, institutions for providing primary or secondary education or both primary and secondary education, being schools maintained by the local education authority. The expression "maintain" is, by section 114 (1), *ibid*, given the meaning assigned to it by subsection (2) of that section.

(d) **"A medical officer of the authority".**—By section 114 (1), p. 255, *post*, "medical officer" means, in relation to any local education authority, a duly qualified medical practitioner employed or engaged, whether regularly or for the purposes of any particular case, by that authority.

(e) **"Clothing".**—By section 114 (1), p. 255, *post*, clothing includes boots and other footwear.

(f) **"Pupils".**—Where used without qualification, this word means persons of any age for whom education is required to be provided under the Act (section 114 (1), p. 255, *post*). Here the word refers to a pupil at a school maintained by the authority—See note (c), *supra*. Later in the subsection it includes also pupils attending county colleges.

(g) **"Reasonable cause to suspect".**—Where a medical officer of an authority suspects that a pupil or his clothing is infested with vermin or in a foul condition but an examination cannot immediately be made, the pupil may be excluded from school or college under subsection (7) of this section.

(h) **"County college".**—As to the definition and provision of county colleges, see section 43, p. 171, *post*.

(i) **"Parent".**—In relation to any child or young person, section 114 (1), p. 255, *post*, provides that "parent" includes a guardian and every person who has the actual custody of the child or young person. Where the father and mother of a child were living together and the child was living with them, it was held, under the appropriate section of the Act of 1921, in *London County Council* v. *Stansell* (1935), 100 J.P. 54; Digest Supp., that the parent was the father and not the mother.

(k) **"Notice".**—As to the service of notices, see section 113, p. 254, *post*.

(l) **"Order".**—It is questionable whether the order here referred to is an order of a local education authority so as to render applicable the provisions of section 111, p. 254, *post*, as to the variation or revocation thereof.

(n) **"It shall be the duty".**—As to the enforcement of this duty, see section 99, p. 237, *post*.

(o) **"County district".**—This provision, which applies only in the case of the local education authority for a county, enables the authority to require the use of the premises of the council of a non-county borough or an urban or a rural district within the county.

(p) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881; *ibid*. 352. See section 11 of the Act of 1848; *ibid*. 278, as to the limitation of time for summary proceedings.

(q) **"A fine not exceeding twenty shillings".**—The maximum penalty under the Education Act, 1921, was ten shillings.

(r) **"Direct".**—See note (l), *supra*.

(s) **"Failure of the pupil to attend school".**—See sections 39 and 40, pp. 161 and 163, *ante*.

(t) **"The requirements of a college attendance notice".**—See sections 44–46, pp. 172 to 177, *ante*.

55. Provision of transport and other facilities.—(1) A local education authority (a) shall make such arrangements (b) for the provision of transport and otherwise (c) as they consider necessary or as the Minister may direct (d) for the purpose of facilitating the attendance of pupils (e) at schools (f) or county colleges (g) or at any course or class provided in pursuance of a scheme of further education (h) in force for their area, and any transport provided in pursuance of such arrangements shall be provided free of charge. [389]

(2) A local education authority may pay the reasonable travelling expenses of any pupil in attendance at any school or county college or at any such course or class as aforesaid for whose transport no arrangements are made under this section. [390]

NOTES

This section replaces section 88 of the Education Act, 1921; 7 Halsbury's Statutes 178, which provided :—

(1) that the powers of a council under the Act should include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children or other scholars attending school or college whenever this was considered to be required by the circumstances of the area; and

(2) that a local education authority for elementary education might provide guides or conveyances for children who, in the opinion of the authority, were, by reason of physical or mental defect, otherwise unable to attend school.

The powers of the above-mentioned section as regards the provision of transport "and otherwise" are converted into a duty and their scope is enlarged. No specific provision is now made, however, for teachers.

Under section 11 (2) (g), p. 98, *ante*, local education authorities are required to include information about their general transport arrangements in their development plans. Apart from the Minister's specific power to compel the authority to exercise a duty imposed by the Act, he will also be able to deal by that means with any cases in which transport facilities are unreasonably withheld.

(a) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) "**Shall make such arrangements**".—The duty imposed by this section is imposed in somewhat different terms from those generally adopted in other sections of the Act, and it appears that two methods of enforcing the exercise of the duty are provided, in addition to the general power of securing adequate transport arrangements under sections 11 and 12, pp. 103 and 107, *ante*. In the first place, the duty may be enforced by directions of the Minister issued under the section and, secondly, in suitable circumstances by the issue of directions under section 68, p. 205, *post*.

(c) "**And otherwise**".—These words will presumably enable the local education authority to provide not only the actual means of conveyance but also guides and other persons to take care of the pupils on their journey. It would appear, however, that subsection (2) of this section means that they do not cover the payment of travelling expenses and that such payments are not part of the duty imposed by the section, but permissive only. As to the obligation of the authority to provide for the safety of pupils for whom transport is provided, see *Shrimpton v. Hertfordshire County Council* (1911), 75 J.P. 201; 19 Digest 556, *19*.

(d) "**As the Minister may direct**".—See note (b), *supra*. As to the variation or revocation of such directions, see section 111, p. 254, *post*.

(e) "**Pupils**".—Subject to the qualifications here used, section 114 (1), p. 255, *post*, provides that pupils mean persons of any age for whom education is required to be provided under the Act.

(f) "***Schools***".—*See the definition of this term in section 114 (1), p. 255, post.*

(g) "**County colleges**".—As to the definition and provision of county colleges, see section 43, p. 171, *ante*

(h) "**Scheme of further education**".—See section 42, p. 170, *ante*.

56. Power to provide primary and secondary education otherwise than at school.—If a local education authority (a) are satisfied that by reason of any extraordinary circumstances (b) a child (c) or young person (d) is unable to attend a suitable school (e) for the purpose of receiving primary or secondary education (f), they shall have power with the approval of the Minister to make special arrangements for him to receive such education otherwise than at school (g). [391]

NOTES

This section provides a variation of the power formerly given by section 23 of the Education Act, 1921; 7 Halsbury's Statutes 140, to provide for the elementary education of a child in exceptional circumstances by arranging board and lodging near the school (which is now replaced by section 50, p. 184, *ante*), by permitting the local education authority in special cases to make arrangements for a child or young person to receive either primary or secondary education, otherwise than at school.

(a) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) "**By reason of any extraordinary circumstances**".—The circumstances here referred to *are not specified* Mere distance from a suitable school would presumably not be a sufficient reason to justify the exercise of the powers given by this section, since such a case would be adequately covered by section 50, p. 184, *ante*. The addition, however, of an adequate reason why the child or young person should not live away from home would probably be sufficient and there are other circumstances too which might justify the use of this section, even though a school should lie within a reasonable distance; for instance, a child or young person might be awaiting a vacancy in a special school. In any event the circumstances will have to be such as the Minister will approve.

(c) "**Child**".—By section 114 (1), p. 255, *post*, "child" means a person who is not over compulsory school age.

(d) **"Young person".**—By section 114 (1), p. 255, *post*, "young person" means a person over compulsory school age who has not attained the age of eighteen years—and as to the attainment of that age, see subsection (5) of that section.

(e) **"A suitable school".**—By section 114 (1), p. 255, *post*, "school" means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school.

(f) **"Primary or secondary education".**—By section 111 (1), p. 254, *post*, both these terms have the meanings respectively assigned to them by section 8, p. 97, *ante*.

(g) **"Otherwise than at school".**—The nature and scope of the education to be afforded in this manner is not stated, but by the definitions of primary and secondary education (see note (f), *supra*) it must be full-time education suitable to the requirements of the child or young person. Under the section the arrangements proposed are subject to the Minister's approval.

57. *Duty of local education authorities to report to local* authorities under 3 & 4 Geo. 5 c. 28 in certain cases.—(1) If it appears to the local education authority (a) that any child (b) in their area who has attained the age of two years is suffering from a disability of mind (c) of such a nature or to such an extent as to make him incapable of receiving education at school (d), it shall be the duty (e) of the authority by notice in writing (f) served upon the parent (g) of the child to require the parent to submit him for examination (h) by a medical officer of the authority (i); and if a parent upon whom such a notice is served fails without reasonable excuse (k) to comply with the requirements thereof, he shall be liable on summary conviction (l) to a fine not exceeding five pounds. [392]

(2) Before any child is so medically examined as aforesaid, the authority shall cause notice to be given to the parent of the time and place at which the examination will be held, and the parent shall be entitled to be present at the examination if he so desires. [393]

(3) If, after considering the advice given with respect to any child by a medical officer in consequence of any such medical examination as aforesaid and any reports or information which the local education authority are able to obtain from teachers or other persons with respect to the ability and aptitude (m) of the child, the authority decide that the child is suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education at school, it shall be the duty of the authority to issue to the local authority for the purposes of the Mental Deficiency Act, 1913 (n), a report that the child has been found incapable of receiving education at school:

Provided that, before issuing such a report with respect to any child the local education authority shall give to the parent of the child not less than fourteen days' notice in writing of their intention to do so, and if within that period the parent refers to the Minister the question (o) whether such a report should be issued, the report shall not be issued except by direction (p) of the Minister. [394]

(4) For the purposes of this section, a child shall be deemed to be suffering from a disability of mind of such a nature and extent as to make him incapable of receiving education at school not only if the nature and extent of his disability are such as to make him incapable of receiving education, but also if they are such as to make it inexpedient that he should be educated in association with other children either in his own interests or in theirs. [395]

(5) If the local education authority are satisfied that any child in attendance at a school maintained by them (q) or at any special school (r) not so maintained is suffering from a disability of mind of such a nature or to such an extent that he will, in their opinion, require supervision after leaving school, the authority shall before the child ceases to be of compulsory school age (s) issue to the local authority for the purposes of the Mental Deficiency Act, 1913, and to the parent of the child, a report that by reason of a disability of mind the child may require supervision after leaving school. [396]

(6) Any report with respect to a child issued under this section to a local authority for the purposes of the Mental Deficiency Act, 1913, shall be accompanied by such records and other information relating to the

child as may be prescribed (*t*); and upon receiving such a report it shall be the duty of that authority to consider whether the person in respect of whom the report was issued ought to be dealt with under that Act. [397]

NOTES

This section replaces section 2 (2), proviso (iv) to section 30, and section 31 of the Mental Deficiency Act, 1913, as amended by the Mental Deficiency Act, 1927, 11 Halsbury's Statutes 162, 179, 180, which are repealed by section 121, p. 270, *post*, and Part I of the Ninth Schedule, p. 294, *post*. The lower limit of the age at which notification is to be made to the local authority under the Mental Deficiency Acts has been reduced from seven to two years.

(a) **"Local education authority"**.—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Child"**.—By section 114 (1), p. 255, *post*, this means a person who is not over compulsory school age, as to which see sections 35 and 38, pp. 155 and 160, *ante*.

(c) **"Disability of mind"**.—For a definition of the nature and extent of the disability here referred to, see subsection (4) of this section. By section 34, p. 154, *ante*, it is the duty of every local education authority to ascertain what children in its area require special educational treatment, and for that purpose the parent of any child who has attained the age of two years may be required to submit him for examination by a medical officer of the authority for advice as to whether the child is suffering from any disability of mind or body, and as to the nature and extent of any such disability. If after considering such advice and any other available information the authority decides that the child requires special educational treatment, that treatment is to be provided. It would appear that a medical examination under section 34, p. 154, *ante*, is not an examination under this section (it may, for instance, be conducted by a medical officer having somewhat different knowledge and experience from that required to determine whether notice must be given to the local authority under subsection (3) of this section) and, if therefore, on such an examination it appears that the child is suffering from a disability of mind for which special educational treatment, as defined in section 8 (2) (*c*), p. 97, *ante*, would not be appropriate a further notice must be given under this section. The necessity to require a child to undergo two separate examinations may cause the parent unnecessary distress and it would, therefore, be desirable for the local education authority to take advantage of any other information in its possession or which is readily available and decide whether examination under this section or under section 34, *supra*, is likely to be more appropriate, or whether it is desirable to serve notice simultaneously under both sections. It will be noted that while section 34, *supra*, refers to disabilities both of mind and body this section refers to disabilities of mind only. Where by reason of disability of body a child is unable to attend school the making of special arrangements under section 56, p. 191, *ante*, would appear to be more appropriate.

(d) **"Incapable of receiving education at school"**.—By section 114 (1), p. 255, *post*, "school" is widely defined and includes a special school, as defined in section 9 (5), p. 100 *ante*.

(e) **"It shall be the duty"**.—As to the enforcement of this duty, which is contingent upon the opinion of the local education authority, see section 68, p. 205, *post*.

(f) **"By notice in writing"**.—As to the service of notices, see section 113, p. 254, *post*.

(g) **"Parent"**.—By section 114 (1), p. 255, *post*, this term, in relation to a child, includes a guardian and every person who has the actual custody of the child.

(*h*) **"Examination"**.—By section 69, p. 205, *post*, the Minister is empowered to make regulations as to the conduct of (*inter alia*) medical examinations for the purposes of the Act. See also note (i), *infra*. A medical examination under this section is not the same as a medical inspection under section 48, p. 179, *ante* (see the definition of the latter term in section 114 (1), p. 255, *post*).

(i) **"A medical officer of the authority"**.—By section 114 (1), p. 255, *post*, "medical officer" means, in relation to any local education authority, a duly qualified medical practitioner employed or engaged, whether regularly or for the purposes of any particular case, by that authority.

(k) **"Without reasonable excuse"**.—No indication is given as to what may be a reasonable excuse, but some regard may be had to the excuses for failure to attend regularly at school which are referred to in section 39 (2), p. 161, *ante*.

(l) **"On summary conviction"**.—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899, 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881, *ibid* 352. See section 11 of the Act of 1848; *ibid*. 278, as to the limitation of time for summary proceedings.

(m) **"Ability and aptitude"**.—See note (p) to section 34, p. 155, *ante*.

(n) **"The local authority for the purposes of the Mental Deficiency Act, 1913"**.—By section 27 of the Mental Deficiency Act, 1913, 11 Halsbury's Statutes 176, the local authority for the purposes of the Act is, in a county, the council of the county and, in a county borough, the council of the borough. In view of the definition of local education authority for the purposes of the Act, the report to be issued under this subsection will normally be given by the authority in one capacity to itself in another capacity. As to the duty of the local authority to which a report is issued under this section, see subsection (6).

(o) **"If within that period the parent refers to the Minister the question"**.—As to the power of the Minister in such circumstances to require the parent of the child to submit him to a medical examination, see section 69 (2), p. 205, *post*.

(p) **"Direction"**.—As to the variation or revocation of such a direction, see section 111, p. 254, *post*.

(q) **"A school maintained by them"**.—As to the meaning of this expression, see sections 114 (1) and (2), p. 255, *post*.

(r) **"Special school"**.—See section 9 (5), p. 100, *ante*.

(s) **"Compulsory school age"**.—This term is defined by sections 35 and 38, pp. 155 and 160, *ante*, and 114 (5), p. 258, *post*.

(t) **"As may be prescribed"**.—By section 114 (1), p. 255, *post*, "prescribed" means prescribed by regulations made by the Minister.

Employment of Children and Young Persons

58. Adaptation of enactments relating to the employment of children or young persons.—For the purposes of any enactment (a) relating to the prohibition or regulation of the employment of children (b) or young persons (c), any person who is not for the purposes of this Act over compulsory school age (d) shall be deemed to be a child within the meaning of that enactment (e) [398]

NOTES

This and the two following sections (sections 59 and 60, pp 194 and 195, *post*) relate to the employment of children and young persons

The purpose of this section is to effect the necessary modifications of the various enactments relating to the employment of children which are necessitated by the rising of the school leaving age to fifteen years and subsequently to sixteen years under sections 33 p 151 *ante*, and 108 (3), p 250, *post* Some of these Acts prohibit the employment of children under fourteen years of age and in view of the raising of the school leaving age it was obviously essential to take steps to avoid leaving in operation any enactments which permitted the whole time employment of children below the statutory school leaving age

(a) **"For the purposes of any enactment "**.—The enactments here referred to include Part II (sections 18 to 30 inclusive) of the Children and Young Persons Act 1933, 26 Halsbury's Statutes 181–192, and the Young Persons (Employment) Act 1938, 31 Halsbury s Statutes 372

(b) **"Children "**.—By section 114 (1), p 255, *post*, "child" for the purposes of this Act means a person who is not over compulsory school age

(c) **"Young persons "**.—By section 114 (1), p 255, *post*, 'young person' means a person over compulsory school age who has not attained the age of eighteen years

(d) **"Compulsory school age "**.—This term is defined by sections 35 and 38, pp 155 and 160 *ante*, and 114 (5), p 258, *post*

(e) **"Child within the meaning of that enactment "**.—The definition in, for example, the Children and Young Persons Act, 1933, section 107, 26 Halsbury s Statutes 238, of the term 'child" as a person under the age of fourteen years' must now be read subject to the provisions of this section See also sections 2 and 37 of the Unemployment Insurance Act, 1935, 28 Halsbury s Statutes 504, 521

59. Power of local education authorities to prohibit or restrict employment of children.—(1) If it appears to a local education authority (a) that any child (b) who is a registered pupil (c) at a county school (d), voluntary school (e), or special school (f), is being employed in such manner as to be prejudicial to his health or otherwise to render him unfit to obtain the full benefit of the education provided for him, the authority may, by notice in writing (g) served upon the employer, prohibit him from employing (h) the child, or impose such restrictions upon his employment of the child as appear to them to be expedient in the interests of the child [399]

(2) A local education authority may, by notice in writing served upon the parent (i) or employer of any child who is a registered pupil at a county school, voluntary school, or special school, require the parent or employer to provide the authority, within such period as may be specified in the notice, with such information as appears to the authority to be necessary for the purpose of enabling them to ascertain whether the child is being employed in such a manner as to render him unfit to obtain the full benefit of the education provided for him [400]

(3) Any person who employs a child in contravention of any prohibition or restriction imposed under subsection (1) of this section, or who fails to comply with the requirements of a notice served under subsection (2) of this section, shall be guilty of an offence against this section and liable on summary conviction (k), in the case of a first offence to a fine not exceeding one pound, in the case of a second offence to a fine not exceeding five pounds, and in the case of a third or subsequent offence to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment [401]

(4) Subsection (1) and subsection (3) of section twenty-eight of the Children and Young Persons Act 1933 (l) (which relate to powers of entry for the enforcement of the provisions of Part II of that Act with respect to the employment of children), shall apply with respect to the provisions of any notice served under this section as they apply with respect to the provisions of the said Part II [402]

NOTES

See the general note to section 58, p 194, *ante* This section replaces sections 94 and para

graphs (a) and (b) of 95 of the Education Act, 1921 ; 7 Halsbury's Statutes 181, and empowers local education authorities to prohibit or restrict the employment of children attending county, voluntary or special schools where it would be prejudicial to the children's health or education

(a) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **" Child ".**—This word is defined by section 114 (1), p 255, *post*, as a person who is not over compulsory school age

(c) **" Registered pupil ".**—By section 114 (1), p. 255, *post*, the term means in relation to any school a pupil registered as such in the register kept in accordance with the requirements of the Act, but does not include any child who has been withdrawn from the school in the prescribed manner. As to the registration of pupils at schools, see section 80, p 218, *post*

(d) **" County school ".**—See section 9 (2), p. 100, *ante*

(e) **" Voluntary school ".**—See sections 9 (2) and 15, pp. 100 and 113, *ante*.

(f) **" Special school ".**—See sections 9 (5) and 33, pp 100 and 151, *ante*

(g) **" Notice in writing ".**—As to the service of notices, see section 113, p. 254, *post*

(h) **" Prohibit him from employing ".**—Any contravention of such a prohibition, or of a restriction imposed under this subsection, is an offence under subsection (3) of this section

(i) **" Parent ".**—By section 114 (1), p 255, *post*, this word, in relation to a child, includes a guardian and any person who has the actual custody of the child.

(k) **" *On summary conviction* ".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899, 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881, *ibid* 352 See section 11 of the Act of 1848 as to the limitation of time for summary proceedings, *ibid* 278

(l) **" Subsection (1) and subsection (3) of section twenty-eight of the Children and Young Persons Act, 1933 ".**—These provisions are as follows —

> " (1) If it is made to appear to a justice of the peace by the local authority, or by any constable, that there is reasonable cause to believe that the provisions of this part of this Act, other than those relating to employment abroad, or of a byelaw made under the said provisions, are being contravened with respect to any person, the justice may by order under his hand addressed to an officer of the local authority, or to a constable, empower him to enter, at any reasonable time within forty-eight hours of the making of the order, any place in or in connection with which the person in question is, or is believed to be, employed or as the case may be, in which he is, or is believed to be, taking part in an entertainment or performance, or being trained, and to make enquiries therein with respect to that person.
>
> . . . . . .
>
> (3) Any person who obstructs any officer or constable in the due exercise of any powers conferred on him by or under this section, or who refuses to answer or answers falsely any enquiry authorised by or under this section to be made, shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds ".

60. Effect of college attendance notices on computation of *working hours*.—*(1) Where a young person (a) is employed in any* employment with respect to which a limitation upon the number of working hours during which he may be employed in that employment otherwise than by way of overtime in any week is imposed by or under any enactment, any period of attendance at a county college (b) required of him during that week by a college attendance notice (c) served on him (d) shall, for the purposes of the limitation, be deemed to be time during which he has been so employed in that week. **[403]**

(2) Where a young person employed in any employment is entitled by or under the provisions of any enactment or of any agreement to overtime rates of pay in respect of any time during which he is employed in that employment on any day or in any week in excess of any specified number of hours or before or after any specified hour, any period of attendance at a county college required of him during that week or on that day by a college attendance notice served on him shall, for the purposes of those provisions, be deemed to be a period during which he was employed in that employment otherwise than in excess of the specified number of hours, or otherwise than before or after the specified hour, as the case may be. **[404]**

NOTES

See the general note to section 58, p 194, *ante* This section, in effect, replaces paragraphs (*c*) and (*d*) of section 95 of the Education Act, 1921 ; 7 Halsbury's Statutes 182, but deals with the matter in a different and more extended way It provides, in general, that the periods during which a young person is required to attend a county college shall be treated as hours of employment for the purposes both of any enactment limiting the hours of employment in a particular occupation and of any agreement or enactment relating to overtime rates of pay

This section will obviously have no effect until the Minister directs that section 44, p. 172, *ante*, is to come into operation (see subsection (1) of that section).

(a) **" Young persons ".**—By section 114 (1), p. 255, *post*, this expression means a person over compulsory school age who has not attained the age of eighteen years (but see subsection (4) of that section as to the attainment of that age).

(b) **"County college".**—As to the definition and provision of county colleges, see section 43, p. 171, *ante*.
(c) **"College attendance notice".**—See section 44, p. 172, *ante*.
(d) **"Served on him".**—As to the service of such notices, see section 113, p. 254, *post*.

Miscellaneous Provisions

61. Prohibition of fees in schools maintained by local education authorities and in county colleges.—(1) No fees shall be charged (a) in respect of admission to any school (b) maintained (c) by a local education authority (d), or to any county college (e), or in respect of the education provided in any such school or college. [405]

(2) Subject as hereinafter provided (f), where any pupil (g) in attendance at any such school or college is provided at the school or college with board and lodging (h) at the expense of the local education authority, fees shall be payable (i) in respect of the board and lodging not exceeding such amounts as may be determined in accordance with scales approved by the Minister (k) :

Provided that—

(*a*) where the board and lodging provided for the pupil is so provided under arrangements made by the local education authority on the ground that, in their opinion, education suitable to his age ability and aptitude (l) cannot otherwise be provided by the authority for him, the authority shall remit (m) the whole of the fees payable under this subsection ; and

(*b*) where the local education authority are satisfied that payment of the full fees payable under this subsection would involve financial hardship to the person liable to pay them, the authority shall remit such part of the fees as they consider ought to be remitted in order to avoid such hardship, or if, in the opinion of the authority, such hardship cannot otherwise be avoided, shall remit the whole of the fees. [406]

(3) Any sums payable under the last foregoing subsection in respect of a pupil shall be payable by his parent (n), so, however, that where the local education authority are satisfied in the case of any young person (o) in attendance at a county college that his financial circumstances are such that the sums so payable in respect of the board and lodging provided for him ought to be defrayed by him, those sums shall be payable by him instead (p) of by his parent ; and any sums so payable shall be recoverable summarily as a civil debt (q). [407]

NOTES

Enactments relating to the charging or prohibition of fees in respect of admission to schools and other educational institutions and in respect of the education provided therein which were in force prior to the coming into operation of this section were as follows :—

(1) **Education Act, 1921, section 37** ; 7 Halsbury's Statutes 150 : this prohibited the charging of fees or the making of charges of any kind in any public elementary school, but did not effect the provisions of that Act (in sections 65, 81 and 83 ; 7 Halsbury's Statutes 166, 175) relating to payments by parents with respect to the provision of meals or the medical treatment of children or by parents of blind, deaf, defective and epileptic children.

(2) **Education Act, 1921, section 75** ; 7 Halsbury's Statutes 170 : this prohibited the charging of fees in continuation schools.

(3) **Education Act, 1921, section 74** , 7 Halsbury's Statutes 170 : this section enabled a higher education authority (*inter alia*) to provide or assist in providing scholarships (including maintenance allowances) for, and to pay or assist in paying the fees of, students at schools, colleges or hostels inside or outside the authority's area.

(4) **Education Act, 1921, section 14 (4)** , 7 Halsbury's Statutes 136 : schemes made under Part II of the Act (none of which in fact were ever approved) were to make adequate provision to secure that children and young persons should not be debarred from receiving the benefits of any form of education by which they were capable of profiting through inability to pay fees.

In addition to these provisions specifically relating to the prohibition of, or otherwise in relation to, school fees, many schools have been in receipt of assistance either from local education authorities or by virtue of direct grants from the Board of Education. This assistance, whether by way of grant or otherwise, enabled the local education authority or the Minister to impose conditions either as regards the fees to be charged or the number of special places to be allocated or otherwise.

Subsection (1) of this section applies to primary (including nursery), secondary and special

schools maintained by local education authorities and county colleges the prohibition on the charging of admission and tuition fees previously applied by section 37 of the Education Act 1921, 7 Halsbury's Statutes 150 to public elementary schools It will also apply to other schools which by the anticipation of the financial benefits to be derived, elect to become voluntary schools

The subsection does not apply to other schools whether they are in receipt of grants or assistance from the Minister or the local education authority or not The position of these schools remains for the time being unchanged, though a lengthy discussion on the subject took place on the Committee stage of the Bill in the House of Commons Mr R A Butler, President of the Board of Education, in the course of the Debate, put the Government's point of view —

"One of the fundamental principles on which this Bill has been built is that there shall be a variety of types of schools One of the varieties which I think is quite legitimate is that there shall be schools in which it is possible for parents to contribute towards the education of their children The only difference between us really is this, that while we in framing this Bill have taken an immense step forward on the Measure of 1918 and fixed the vast range of secondary education, all we say is that, consistent with our philosophy, there should be a few schools—there are very few—in which it should be possible for parents to contribute towards the cost of the education of their children, just as they are able to contribute to various other laudable objects in their lives

Let me examine the principle I have enunciated, that it is not unusual for parents to contribute towards the cost of the education of their children It would be an unusual thing, in my view, if a parent were able to purchase a place in a school to the exclusion of someone who would make a potentially better citizen I propose to show how we can deal with that difficulty we propose that there should be special arrangements for dealing with the direct grant school We propose that authorities should be able to secure the places in them which they need for a number of children to supplement the provision in the county and auxiliary (now called "voluntary" schools in the Act) schools Thus we shall expect the local authority to assess its needs and tell the governors what places it requires The local authority can pay the fees of any pupils in these other schools whether they are in or outside the area, because one difference is that such schools often serve more than one individual area

We come up against another problem The needs of the local education authorities will normally be met by the vast majority of the county secondary provision its schools provide The Committee must be under no impression that there is a great shortage of grammar school places In some areas they have quite enough to fit in the number of pupils they have In others, you may get another problem You may find that direct grant schools, in some areas, provide the main secondary provision In that case you would be up against a very definite problem It may well be that, in those areas, we shall have to consider the reconstitution of the direct grant list as a whole We shall either have to adopt a system whereby an authority obtains in a suitable manner the places it wants in the schools or the schools in a particular area are, in part or in whole formally transferred to the aided or controlled list in the aided list it will be possible for them to have their running costs paid including the costs of their teachers' salaries as well as half the cost of any alterations I do not put it past the vision of some of our great denominations to see the advantage of aided status Other schools will feel that they want to transfer to the direct grant list

I want to make it quite clear that we do not intend that schools shall slip out of the maintained list under (section) 9, simply in order to become assisted and to be able to charge fees I can give that definite assurance Discretion in deciding that will be in the hands of the Minister Similarly, I propose that there shall be a discretion in the hands of the Minister on the question of what schools pass over from the aided list to the direct grant list It seems to me that the Government will have to be satisfied that the school itself is in a suitable financial position It is no good schools thinking that they can come on the list and get a direct grant from public funds, if they are not themselves in a healthy financial position It will be necessary for us to see the extent to which a school serves an area outside its own area That is an important feature of the direct grant list Here I must listen to the final view of the Fleming Committee The Fleming Committee have to consider this question together with that of the public schools'

The Fleming Committee was set up in July, 1942, to consider and report generally on the public school system but, in November, 1942, the Committee was asked to submit a separate report as soon as possible on the question of the abolition of fees in grant aided secondary schools The Committee's first Report, consisting of a Majority Report signed by eleven members and a Minority Report signed by seven members, and submitted to the President of the Board in April, 1943, and subsequently published under the title of the "Abolition of Tuition fees in Grant Aided Secondary Schools" In general the Majority Report was in favour of the abolition of tuition fees in all grant aided, including the direct grant, schools (paragraphs 49–52), whilst the Minority Report recognised the need for some exceptions It is not, however, possible here to set out the complete findings of the Committee, especially as the decisions thereon of the Government have not yet been formulated

The second and main Report of the Fleming Committee was published in July, 1944, under the title of "The Public Schools and the General Educational System" Various parts of this Report also touch upon the question of fees and deserve careful examination

Subsection (2) of this section provides that fees for boarding are to be charged in accordance with scales to be approved by the Minister No such fees will, however, be payable where a child cannot be suitably educated except at a boarding school and they may be remitted or reduced, or remitted altogether, in cases of financial hardship

(a) **"No fees shall be charged".**—The duty hereby imposed may be enforced by the Minister under section 99, p 237, *post*

(b) **"School"**.—See the definition of this term in section 114 (1), p 255, *post*, which, however, must be read subject to the qualifying words in this subsection

(c) **"Maintained".**—By section 114 (1), p 255, *post*, the word "maintain" has the meaning assigned to it by subsection (2) of that section

(d) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(e) **" County college "**.—As to the definition and provision of county colleges, see section 43, p. 171, *ante*.

(f) **" Subject as hereinafter provided "**.—This refers to the provision made for the remission of the whole or part of the fees under provisoes (*a*) and (*b*) to this subsection.

(g) **" Pupil "**.—By section 114 (1), p. 255, *post*, this word, where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(h) **" Board and lodging "**.—Section 8 (2), p. 97, *ante*, requires the local education authority, in fulfilling its duties under that section, to have regard (*inter alia*) to the expediency of securing the provision of boarding accommodation, either in boarding schools or otherwise, for pupils for whom education as boarders is considered by their parents and by the authority to be desirable. As to the provision of board and lodging otherwise than at boarding schools or colleges and as to the recovery of the cost thereof, see, respectively, sections 50 and 52, pp. 184 and 186, *post*.

(i) **" Fees shall be payable "**.—As to the recovery of such fees, see the last part of subsection (3) of this section and note (p), *infra*.

(k) **" In accordance with scales approved by the Minister "**.—Such scales will presumably be adopted individually by local education authorities and the Minister's approval thereto sought.

(l) **" Education suitable to his age, ability and aptitude "**.—See note (n) to section 8, p. 98, *ante*, and note (f) to section 36, p. 158, *ante*. This provision means that wherever it is necessary for a pupil to be provided with boarding accommodation at a school or college because suitable education cannot otherwise be provided, e g. within a reasonable distance of his home, no fees may be charged for board and lodging. For instance, no fees for board and lodging will be chargeable where it is necessary for a pupil to attend a special school which is also a boarding school, and also where board and lodging has to be provided at a school or college because as a result of the area covered all the pupils cannot travel to school daily.

(m) **" The authority shall remit "**.—The duty of remission in this proviso and in proviso (*b*) to the subsection, though contingent upon the opinion of the authority, may be enforced by the Minister under section 68, p. 205, *post*.

(n) **" Parent "**.—By section 114 (1), p. 255, *post*, this expression, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(o) **" Young person "**.—By section 114 (1), p. 255, *post*, " young person " means a person over compulsory school age (see sections 35 and 38, pp. 155 and 160, *ante*) who has not attained the age of eighteen years (see section 114 (5), p. 258, *post*).

(p) **" Shall be payable by him instead "**.—No indication is given as to the circumstances in which the local authority may be so satisfied, but it will obviously be prudent to have regard, in coming to a decision whether to effect recovery from the parent or the young person, to the probable attitude of the court.

(q) **" Shall be recoverable summarily as a civil debt "**.—By section 35 of the Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 342, any sum declared by the Act or by any future Act to be a civil debt which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts. A warrant is, however, not to be issued for the apprehension of any person for failing to appear to answer any such complaint, nor is the order to be enforced by imprisonment except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under section 5 of the Debtors Act, 1869; 1 Halsbury's Statutes 575; see also the Money Payments (Justices Procedure) Act, 1935; 28 Halsbury's Statutes 62, 125.

62. Duties of Minister and of local education authorities as to the training of teachers.—(1) In execution of the duties imposed on him by this Act (a), the Minister shall, in particular, make such arrangements as he considers expedient for securing that there shall be available sufficient facilities for the training of teachers for service in schools (b) colleges (c) and other establishments maintained (d) by local education authorities (e), and for that purpose the Minister may give to any local education authority such directions as he thinks necessary (f) requiring them to establish maintain or assist (g) any training college or other institution or to provide or assist the provision of any other facilities specified in the direction. [408]

(2) Where by any direction given under this section a local education authority are required to perform any such functions as aforesaid, the Minister may give such directions to other local education authorities requiring them to contribute towards the expenses incurred in performing those functions as he thinks just. [409]

NOTES

Under this section the Minister has a general responsibility for ensuring that adequate facilities are available for the training of teachers and may give any necessary directions to local education authorities for this purpose.

The White Paper on Educational Reconstruction (Cmd. 6458 of 1943, at p. 26) says :—

" Legislation can do little more than prepare the way for reform. It will rest with the (Minister) and the local education authorities and, not least, with the teachers working in the schools, to translate its aims into practice. That there will be needed the services of a large body of teachers with very varied qualifications is obvious. But it is not merely a larger number of teachers that will be required but a larger number of teachers of the required calibre. It would be deplorable if the necessary corps of teachers could be obtained

only at the expense of lowering existing standards It depends almost entirely upon the quality of those who staff the schools whether the reforms proposed will be merely administrative reforms or whether they will, in practice, work out as real educational reforms "

The former statutory provision enabling local education authorities to take part in the training of persons for the teaching profession was contained in section 71 of the Education Act, 1921 , 7 Halsbury's Statutes 168, which provided (*inter alia*) that—

" The power of a local education authority to supply or aid the supply of higher education under this Act includes—

(*a*) the power to train teachers ,
(*b*) the power to make provision for the purpose outside their area in cases where they consider it expedient to do so in the interests of their area , and
(*c*) the power to provide or assist in providing scholarships (which term includes allowances for the maintenance) for, and to pay or assist in paying the fees of, students at schools or colleges or hostels within or without that area ".

The general question of the supply, recruitment and training of teachers may be considered under two headings—

(1) a short-term policy of emergency recruitment and training ,
(2) the long term policy

The long term policy of the Ministry has not yet been finally settled, but the Ministry now has the benefit of the Report of the Committee appointed in March, 1942, by the President of the Board of Education to consider the Supply, Recruitment and Training of Teachers and Youth Leaders, which was presented and published in March, 1944 In a prefatory note thereto Sir Maurice Holmes said on behalf of the Board —

" The Committee of Council on Education first defined the conditions under which training colleges could qualify for grant in 1843–44, exactly a hundred years ago About thirty years later, when Board Schools were established, the Committee had recognised thirty-four colleges accommodating 2,500 students After another thirty years, when the School Boards were abolished, there were sixty one colleges and 6,000 students The Board of Education now recognise more than 100 institutions, voluntary colleges having been supplemented, since 1890, by university training departments and, since 1902, by colleges provided by local education authorities In 1938 there were 15,000 students, including degree students in their undergraduate years, in attendance at training institutions recognised by the Board of Education

The development of training facilities during the past hundred years has not been systematically planned It has certainly not matched, either in quantity or variety, the growth and diversity of other educational provision It is sufficient, in this connection, to mention that a large number of teachers now in the secondary schools have not pursued any course of professional training and that there is at present no systematic provision for the training of teachers in technical colleges

It is significant that an official enquiry into the training of teachers which was instituted so recently as twenty years ago was confined to teachers in public elementary schools But that enquiry was made before the publication of the Hadow Report on the *Education of the Adolescent* The recommendations of that report relating to the reorganisation of schools as primary and secondary schools are embodied in last year's White Paper entitled *Educational Reconstruction* and in the Education Bill now before Parliament, the provisions of which involve the abolition of the term " elementary school " and the creation of a unified system of education The McNair Committee was appointed before the publication but not before the inception of the White Paper, and it could not, with profit, have been limited by its terms of reference to the training of teachers in any particular type of school Moreover, the Committee was charged to consider also the training of youth leaders

Legislative and administrative changes alone will not by themselves make effective the educational reforms upon which this country is determined There must be a supply of teachers adequate both in quantity and quality The Board of Education will therefore examine the far reaching proposals made in this Report with great care They commend them also to the study of other bodies and persons who are interested in the education and training of teachers and youth leaders "

It is impossible adequately to summarise in this work the McNair Committee's monumental Report of 176 pages, and since the Ministry has not yet announced its findings it would not be entirely desirable to do so In relation to one aspect of the problems of recruitment, however, the Ministry has already given some indications to local education authorities and governing bodies of " non-L E A " secondary schools Board of Education Circular 1654 (12th May, 1944), which was addressed to local education authorities and governing bodies of non L E A secondary schools, is as follows —

" EXTENSION OF SCHOOL LIFE IN SUITABLE CASES AND THE SUPPLY OF TEACHERS

1 In their report "Teachers and Youth Leaders", the McNair Committee draw attention to two ways in which assistance can be given towards meeting the problem of the supply of teachers The first is that steps should be taken to prevent suitable pupils being lost to the profession by premature withdrawal from school owing to economic pressure Local education authorities have full powers to grant maintenance allowances to pupils at the advanced stage of secondary school life where the income of the parent so justifies, and the Board regard it as of importance that authorities should satisfy themselves that in practice their present provision of such assistance is adequate for the purpose

The second is that the increasing importance of the teaching profession should be brought clearly to the notice of boys and girls in the higher forms of secondary schools This is a matter to which the Board have referred in the past, and they hope that authorities and governors will give special attention to it before the end of the current school year

2 The Committee also emphasise the importance of drawing on the potential supply of suitable recruits which undoubtedly exists among pupils in senior elementary and other schools,

and they urge the provision of continued education for such pupils in appropriate cases up to the age of eighteen. Such provision of this kind as can be made now would be at once an earnest of the extended school life contemplated under the Bill now before Parliament, and a specific step towards securing later some of the additional staffing required to give effect to that part of the programme of educational reform.

3. The Government are accordingly anxious, so far as the limits of accommodation and staff permit, to lose no time in bringing within the reach of suitable pupils the opportunity for continuing their education beyond the statutory school-leaving age, more particularly in cases where it will be continued up to the age of eighteen. Although the development of educational policy will at a later stage make further facilities available in a wider range of post-primary schools than at present, for the time being the most obvious course is to transfer suitable pupils at the age of thirteen from senior to secondary schools as now defined. This practice has long been in force on a small scale and it was one of the proposals of the White Paper that it should be given general application.

4. The Board desire that every effort should be made to accelerate this development before the beginning of the school year 1944–45, and they will be glad if local education authorities, in consultation where necessary, will take steps to arrange for the transfer, with the concurrence of their parents, of children of this age possessing suitable qualifications, who appear likely, if given the opportunity, to continue their education up to the age of eighteen. Moreover, in view of the special importance of increasing the supply of possible teachers in the future, the Board would ask authorities to consider also the cases of pupils of fourteen or fifteen who would otherwise leave the elementary schools but who might, with advantage, be transferred.

5. It will, of course, be understood that there is no question of earmarking children of thirteen or fourteen for the teaching or any other calling, and no suggestion should be made to parents that their children are under any obligation to enter the teaching profession if they take advantage of any provision that the authority may find it possible to offer.

6. It is recognised that, particularly with the existing pressure on secondary school accommodation and the shortage of teachers, transfers of this kind on a large scale may be difficult to effect in many areas, either from the point of view of securing places or of organising the classes and courses within the schools. Nevertheless, the Board hope that authorities will use every effort to overcome these difficulties. Where there is need for temporary accommodation the Board will be glad to assist authorities and governing bodies to obtain it so far as the restrictions in force allow.

7. While the Board have dealt above mainly with the transfer of pupils to secondary schools, it may be that in particular cases authorities will have alternative suggestions, e.g., the organisation of special classes in central, senior or other schools, from which pupils might be transferred to secondary schools, if necessary, at sixteen. Under the present law there are limitations on the retention of pupils in senior elementary schools, but when the present Bill becomes law these restrictions will disappear and there is no reason why authorities should not consider such measures, whether as alternative, or supplementary, to the transfer of pupils at thirteen.

8. In view of the importance which the Board attach to the matter, they would be glad if local education authorities would inform them in due course of the arrangements which they have made under this Circular, together with any relevant statistics of the number of pupils who are likely to benefit from them ".

As regards the short-term policy, active steps have been and are being taken. Board of Education Circular 1652 (15th May, 1944), headed " Emergency Recruitment and Training of Teachers " enclosed the interim report of an Advisory Committee appointed by the President of the Board in December, 1943, to advise him on an Emergency Scheme for this purpose and stated :—

" The Board welcome the recommendations in this report, which they propose to take as a basis for action on the matters with which it deals ".

The Scheme approved by the Committee provides for one-year courses for mature students from H.M. Forces and other forms of national service, followed by two-year courses of part-time study related to the students' previous attainments and aptitudes and to the opportunities open to them.

(a) **" The duties imposed on him under this Act ".**—This refers in particular to the duty imposed on the Minister by section 1, p. 83, *ante*, " to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area ".

(b) **" Schools ".**—The term " school " is defined by section 114 (1), p. 255, *post*, but must be read subject to the qualifying words " maintained by local education authorities ".

(c) **" Colleges ".**—This word refers mainly to county colleges, which are defined in and to be established under section 43, p. 171, *ante*.

(d) **" Maintained ".**—By section 114 (1), p. 255, *post*, the word " maintain " has the meaning assigned to it by subsection (2) of that section.

(e) **" Local education authorities ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(f) **" Such directions as he thinks necessary ".**—As to the enforcement of such directions, see section 99, p. 237, *post*, and as to the variation or revocation of such directions, see section 111, p. 254, *post*.

(g) **" Maintain or assist ".**—By section 114 (1), p. 255, *post*, the words " maintain " and " assist " have, in relation to any school or county college (or, in the case of " assist ", in relation to " any school, college or institution "), the meanings assigned to them by subsection (2) of that section. Since the same section provides that a school is an institution for providing primary or secondary education or both, and a county college is a special form of part-time educational establishment, the words " maintain " and " assist " as here used cannot in strictness have the above-mentioned definitions applied to them.

63. Exemption from building byelaws of buildings approved by the Minister.—(1) Section seventy-one of the Public Health Act, 1936 (a) (which provides for the exemption of certain buildings from

building byelaws) shall have effect as if for paragraph (*a*) thereof there were substituted the following paragraph :—

" (*a*) any buildings (b) required for the purposes of any school (c) or other educational establishment (d) erected or to be erected according to plans which have been approved by the Minister of Education " [410]

(2) Where plans for any building required for the purposes of any school or other educational establishment are approved by the Minister, he may by order direct (e) that any provision of any local Act or of any byelaw made under such an Act shall not apply in relation to the building or shall apply in relation thereto with such modifications as may be specified in the order [411]

NOTES

Section 166 of the Education Act, 1921, 7 Halsbury's Statutes 211, formerly provided that the provisions of any building byelaws made under section 157 of the Public Health Act, 1875; 13 Halsbury's Statutes 689, and any similar local Act provisions should not apply in the case of new school premises to be erected according to plans approved under grant regulations by the Board of Education. So far as building byelaws are concerned the provisions of the Public Health Act, 1875; 13 Halsbury's Statutes 623, as amended and extended by the Public Health Acts Amendment Acts, 1890 and 1907; 13 Halsbury's Statutes 824, 911, have been replaced by those of the Public Health Act, 1936; 29 Halsbury's Statutes 309. This section, therefore, merely brings the previous provision into line with modern practice. Section 71 of the Public Health Act, 1936; 29 Halsbury's Statutes 381, as amended by this section, now provides (*inter alia*) that nothing in the foregoing provisions (sections 14–70; 29 Halsbury's Statutes 333–381) of Part II of that Act with respect to building byelaws, or in any building byelaws made thereunder, is to apply in relation to any buildings required for the purposes of any school or other educational establishment erected or to be erected according to plans which have been approved by the Minister of Education.

Nothing in the present Act exempts school and other educational buildings from the operation of any enactment relating to town and country planning or the provisions of any planning scheme made under those enactments, nor is any automatic exemption given under those enactments. See the Town and Country Planning Act, 1932, 25 Halsbury's Statutes 470 and the Town and Country Planning (Interim Development) Act, 1943

(a) **" Section seventy-one of the Public Health Act, 1936 ".**—See the general note to this section.

(b) **" Buildings ".**—The word " building " is not defined in the Public Health Act, 1936; 29 Halsbury's Statutes 309 There are, however, numerous decided cases upon the meaning of this and similar terms in various enactments

(c) **" School ".**—By section 114 (1), p 255, *post*, this expression means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school. There is nothing in Part III of the Act which requires the plans of any proposed independent school to be approved by the Minister, though he may take the steps referred to in section 71, p. 208, *post*, where (*inter alia*) he is satisfied that the school is objectionable on the ground that the school premises or any parts thereof are unsuitable for a school In view of the fact that approval of the plans of any school is sufficient to exempt the buildings from the building byelaws the Minister will no doubt take care in such cases to ensure that any registration or other action taken under Part III, *supra*, does not amount to a formal approval of plans for the purposes of this section

(d) **" Other educational establishment ".**—This phrase is not defined except for the purposes of section 77, p 213, *post*, relating to inspection. It is, however, a general term and intended to cover all types of educational establishment over which the Minister may exercise jurisdiction

(e) **" He may by order direct ".**—As to the revocation and variation of orders and directions, see section 111, p 254, *post* and as to the enforcement thereof, see section 99, p 237, *post*

64. Exemption of voluntary schools from rates.—No person (a) shall be liable to pay, in respect of the school premises (b) of any voluntary school (c), any rate the proceeds of which are applicable to public local purposes (d), whether directly or by reason of any precept or otherwise, being a rate leviable on the basis of an assessment in respect of the yearly value of property [412]

NOTES

Formerly, section 167 of the Education Act, 1921, 7 Halsbury's Statutes 211, exempted from local rates, as defined in the section, any land or buildings used exclusively or mainly for the purpose of the schoolrooms, offices or playgrounds of a non-provided elementary school, except to the extent of any profits derived from letting by the managers. The present section extends this exemption to all voluntary schools, primary and secondary.

(a) **" Person ".**—By section 19 of the Interpretation Act, 1889; 18 Halsbury's Statutes 1001, in every Act passed after the commencement of that Act, unless the contrary intention appears, this expression includes any body of persons corporate or unincorporate.

(b) **" School premises ".**—By section 114 (1), p. 255, *post*, the word " premises " in relation to any school includes any detached playing fields, but, except where otherwise expressly

provided, does not include a teacher's dwelling-house. This continues the former liability to normal assessment and rating of the teacher's dwelling-house.

(c) **"Voluntary school".**—See sections 9 (2) and 15, pp 100 and 113, *ante*. County schools, nursery schools and special schools, all of which, like voluntary schools, are maintained by local education authorities, are not exempt from rating.

(d) **"Any rate the proceeds of which are applicable to public local purposes."**—By section 167 (2) of the Education Act, 1921, 7 Halsbury's Statutes 211, "local rate", the term used in that section, meant a rate the proceeds of which were applicable to public local purposes and which was leviable on the basis of an assessment in respect of the yearly value of property, and included any sum which, though obtained in the first instance by a precept, certificate or other instrument requiring payment from some authority or officer, was or could be ultimately raised out of a local rate as before defined

65. Endowments for maintenance of voluntary schools.—Where any sums which accrue after the date of the commencement of this Part of this Act (a) in respect of the income of any endowment (b) are required (c) by virtue of the provisions of any trust deed (d) to be applied towards the maintenance of a school (e) which a local education authority (f) are required to maintain (g) as a voluntary school (h), the said sums shall not be payable to the local education authority, but shall be applied by the managers or governors (i) of the school towards the discharge of their obligations, if any, with respect to the maintenance of the school (k), or in such other manner, if any, as may be determined by a scheme for the administration of the endowment (l) made after the date of the commencement of this Part of this Act. [413]

NOTES

Section 41 of the Education Act, 1921, 7 Halsbury's Statutes 152, replacing section 13 of the Education Act, 1902, and part of the First Schedule to the Education (London) Act, 1903, provided that nothing in that Act was to affect any endowment or the discretion of any trustees in respect thereof Where, however, under the trusts or other provisions affecting an endowment the income thereof was to be applied in whole or in part for purposes of a public elementary school for which provision was to be made by the local education authority, the whole or the part of the income, as the case might be, was to be paid to that authority. Such monies were to be applied in relief of rates and, in counties, in aid of the rate levied in the parish or parishes served by the school, except in London.

There were a number of decided cases on the meaning of this provision which gave rise to difficulty in light of the opening words of the section

The White Paper on Educational Reconstruction (Cmd 6458 of 1943) indicated that it was proposed to alter the law, which was believed to be the only known case of the statutory diversion of charitable funds to the relief of rates, and was directly contrary to a long established rule of the Court of Chancery. In London, it was pointed out, the income of such endowments was not paid in relief of rates and the Board of Education had power to substitute new trusts by a scheme to be made on the application of the trustees or the local education authority. It was proposed to extend the London provisions to the rest of the country in respect of the endowment of both primary and secondary schools and this is the effect of the present section, after the obligations of the managers or governors, if any, in respect of the maintenance of the school premises have been met.

(a) **"The date of the commencement of this Part of this Act".**—Part II of the Act comes into operation on 1st April, 1945

(b) **"Endowment".**—Endowments relating to schools are subject to the provisions of the Endowed Schools Acts, 1869 to 1908, which comprised the Endowed Schools Acts, 1869, 1873 and 1874; 7 Halsbury's Statutes 241, 258, 263, the Endowed Schools (Vested Interests) Act Continuance Act, 1875; *ibid* 265, the Welsh Intermediate Education Act, 1889; *ibid.* 265, and the Endowed Schools (Masters) Act, 1908, *ibid* 272. A few provisions of the Endowed Schools Acts, 1860 and 1868; *ibid.* 239, 240, are not entirely obsolete

(c) **"Are required".**—One of the difficulties arising under section 41 of the Education Act, 1921, related to the question as to whether under the trusts of an endowment the trustees had a discretion to apply the income to any other purposes than those for which provision was to be made by the local education authority. Where the purposes involved were those of the managers and the authority respectively no difficulty will arise under the present section, but problems may still arise where other purposes are involved

(d) **"Trust deed".**—By section 114 (1), p 255, *post*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof.

(e) **"School".**—This word is defined by section 114 (1), p 255, *post*, but must be read in relation to the qualifying words contained in this section.

(f) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(g) **"Are required to maintain".**—By section 114 (1), p. 255, *post*, the word "maintain" has the meaning assigned to it by subsection (2) of that section, which provides (*inter alia*) that, for the purposes of the Act, the duty of a local education authority to maintain a school is to include the duty of defraying all the expenses of maintaining the school except, in the case of an aided school or a special agreement school (as to which see section 15, p. 113, *ante*), any expenses that by virtue of any provision of this Act or of any special agreement made thereunder are payable by the managers or governors of the school, and the expression "maintain" is to be construed accordingly.

(h) **" Voluntary school ".**—See section 9 (2), p. 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p. 113, *ante*.

(i) **" Managers or governors ".**—See sections 17–20, pp. 121 to 130, *ante*, and in particular note (d) to section 17, p. 122, *ante*. For the transitional provisions of the Act which apply until the question is settled as to whether a voluntary school is to become a controlled, an aided or a special agreement school, see section 32, p. 150, *ante*.

(k) **" Their obligations, if any, with respect to the maintenance of the school ".**—In the case of a controlled school, the managers or governors have no obligations with respect to the maintenance of the school, but the managers or governors of aided and special agreement schools are responsible for the expenses referred to in paragraphs (*a*) and (*b*) of section 15, p. 113, *ante*.

(l) **" A scheme for the administration of the endowment ".**—As to the making of schemes, see in particular sections 9 and 28 of the Endowed Schools Act, 1869; 7 Halsbury's Statutes 244, 251, and section 75 of the Elementary Education Act, 1870; 7 Halsbury's Statutes 121. A list of the Endowed Schools Acts, which were made permanent by the Expiring Laws Act, 1922; 18 Halsbury's Statutes 1178, is given in note (b), *supra*. Schemes of the type referred to in this section may also be made by the Minister in exercise of his jurisdiction under the Charitable Trusts Acts (see in particular section 2 of the Charitable Trusts Act, 1860; 2 Halsbury's Statutes 363).

No new scheme will be necessary to enable the managers or governors of an aided or a special agreement school to apply the income of the endowment to the discharge of their obligations with respect to the maintenance of the school.

66. Power of local education authorities to assist governors of aided secondary schools in respect of liabilities incurred before commencement of Part II.—A local education authority (a) shall have power, so far as may be authorised by arrangements approved by the Minister, to make grants to the governors (b) of any aided secondary school (c) for the purpose of helping them to discharge any liability incurred, before the date of the commencement of this Part of this Act (d), by them or on their behalf or by or on behalf of any former managers or governors (e) of the school or any trustees thereof, for the purposes of establishing or carrying on the school. **[414]**

NOTES

This section enables a local education authority, if it thinks fit and the Minister approves, to assist the governors of a school which becomes an aided secondary school under the Act to meet liabilities incurred before the date of the commencement of Part II. It is strictly limited in character, and required for a strictly limited purpose to enable the authority to continue to help to pay off loans or to meet expenditure on the school premises where the authority had previously given that assistance by way of a deficiency grant under the previous law.

(a) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **" Governors ".**—See note (d) to section 17, p. 122, *ante*.

(c) **" Aided secondary school ".**—See sections 9 (2) and 15, pp. 100 and 113, *ante*.

(d) **" The commencement of this Part of this Act ".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p. 267, *post*).

(e) **" Any former managers or governors ".**—In this instance the reference is not to managers or governors as the term is generally used in this Act, though the earlier reference in the subsection to " governors " is to governors under this Act (see note (b), *supra*), but to managers or governors under the previous law—see section 32, p. 150, *ante*, and the notes to that section.

67. Determination of disputes and questions.—(1) Save as otherwise expressly provided by this Act (a), any dispute (b) between a local education authority (c) and the managers or governors (d) of any school (e) with respect to the exercise of any power conferred or the performance of any duty (f) imposed by or under this Act, may, notwithstanding any enactment rendering the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the managers or governors, be referred to the Minister; and any such dispute so referred shall be determined by him. **[415]**

(2) Any dispute between two or more local education authorities as to which of them is responsible for the provision of education for any pupil (g), or whether contributions (h) in respect of the provision of education for any pupil are payable under this Act by one local education authority to another, shall be determined by the Minister. **[416]**

(3) Where any trust deed (i) relating to a voluntary school (k) makes provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious instruction given in the school (l) which purports to be in accordance with the provisions of the

trust deed (m) does or does not accord with those provisions, that question shall be determined (n) in accordance with the provisions of the trust deed. [417]

(4) If any question arises whether any alterations (o) to the school premises (p) of a county school (q) or a voluntary school would amount to the establishment of a new school (r), that question shall be determined by the Minister. [418]

NOTES

This section deals with four distinct matters :—

(1) disputes between a local education authority and the managers or governors of a school (subsection (1)) ;

(2) disputes between two local education authorities as to the provision of education for a pupil or the payment of contributions by one authority to another (subsection (2)) ;

(3) the question whether religious instruction given in a school is in accordance with the provisions of the trust deed (subsection (3)) ; and

(4) the dividing line between alterations to a school and the establishment of a new school (subsection (4)).

Subsection (1) is much wider than the corresponding provision in the Education Act, 1921 (section 29 (9) ; 7 Halsbury's Statutes 146), which provided merely that questions arising under that section (*relating to the conditions to be observed* in the conduct of non provided schools) between a local education authority and the managers of a non-provided public elementary school were to be determined by the Board of Education The new provision relates to disputes in which the managers or governors of any school are concerned, and also to the exercise of any power or the performance of any duty imposed by or under the Act, unless any particular section expressly provides some other method of determining the dispute. Disputes arising under instruments of management or government, or under rules of management or articles of government, may be determined under this subsection.

Subsection (2) provides for the determination of disputes arising between two or more local education authorities as to the responsibility for the provision of primary or secondary education, under section 8, p. 97, *ante*, or further education, under section 41, p. 164, *ante*, for any pupil, or as to the payment of contributions under section 106, p. 248, *post*.

Subsection (3) replaces and extends to all voluntary schools the proviso to paragraph (c) of section 29 (5) of the Education Act, 1921 ; 7 Halsbury's Statutes 145.

Subsection (4) replaces and extends to all county and voluntary schools section 18 (2) of the Education Act, 1921 ; 7 Halsbury's Statutes 138.

(a) **" Save as otherwise expressly provided by this Act "**.—See, for instance, section 11, p. 103, *ante*, regarding objections to the development plan of the local education authority, section 13, p. 109, *ante*, regarding objections to proposals made under that section, section 20, p. 130, *ante*, as to failure to agree on the number of managers or governors of a group of schools and section 24, p 136, *ante*, regarding the contents of the rules of management or articles of government of an aided school.

(b) **" Any dispute "**.—The following cases decided under the previous law may have some relevance : *Blencowe* v. *Northamptonshire County Council* [1907] 1 Ch. 504 ; 19 Digest 560, *35* ; *Wilford* v. *West Riding of Yorkshire County Council* [1908] 1 K.B. 685 ; 19 Digest 558, *29* (a change of character of a non-provided school, against the managers' wishes, was not a matter for the Board's decision), *Board of Education* v. *Rice* [1911] A.C. 179 ; 19 Digest 602, *290* ; *West Suffolk County Council* v. *Olorenshaw* [1918] 2 K.B. 687 ; 19 Digest 561, *37* (the Courts have no jurisdiction over any matter coming within the scope of the enactment).

(c) **" Local education authority "**.—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(d) **" Managers or governors "**.—See sections 17–20, pp. 121 to 130, *ante*, and, in particular, note (d) to section 17, p. 122, *ante*.

(e) **" Any school "**.—Apparently it is intended that this subsection is to apply to every school coming within the definition in section 114 (1), p. 255, *post*, namely, any institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school. However, the reference to " managers or governors " of any school casts some doubt upon this interpretation, since the phrase " managers or governors ", as used in the Act, relates only to county and voluntary schools.

(f) **" The performance of any duty "**.—As to the enforcement of duties imposed on local education authorities and upon managers or governors by or under the Act, see section 9, p. 100, *post*.

(g) **" Pupil "**.—By section 114 (1), p. 255, *post*, this word, where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(h) **" Contributions "**.—See section 106, p. 248, *post*

(i) **" Trust deed "**.—By section 114 (1), p. 255, *post*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof.

(k) **" Voluntary school "**.- See section 9 (2), p. 100, *ante*, and as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p. 113, *ante*.

(l) **" Religious instruction given in the schools "**.—As to religious education in county and voluntary schools, see sections 25–30, pp. 139 to 147, *ante*.

(m) **" In accordance with the provisions of the trust deed "**.—As to the giving of such religious instruction in controlled schools, see section 27, p. 143, *ante*, and in aided and special agreement schools, see section 28, p. 144, *ante*

(n) **" That question shall be determined "**.—Where the trust deed makes no such provision, the question may have to be decided by reference to the Court or, where the dispute

is between the local education authority and the managers or governors by the Minister under subsection (1) of this section

(o) **"Alterations".**—By section 114 (1), p 255, *ante*, this term, in relation to any school premises includes any improvements or enlargements which do not amount to the establishment of a new school

(p) **"School premises"**—By section 114 (1), p 255, *post*, "premises", in relation to any school includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house

(q) **"County school"**—See section 9 (2) p 100 *ante*

(r) **"The establishment of a new school".**—The importance of this subsection arises from the fact that if it is proposed to establish a new county school or a new voluntary school, the local education authority or, as the case may be the *persons proposing to establish the school* are required to comply with the provisions of section 13 p 109, *ante* It is also specifically provided by section 16 (1) p 119 *ante*, that the transfer of a county school or a voluntary school to a new site for the reasons there stated is not to constitute the establishment of a new school

68. Power of Minister to prevent unreasonable exercise of functions.—If the Minister is satisfied, either on complaint by any person (a) or otherwise (b), that any local education authority (c) or the managers or governors (d) of any county or voluntary school (e) have acted or are proposing to act unreasonably (f) with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may, notwithstanding any enactment rendering the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the managers or governors, give such directions (g) as to the exercise of the power or the performance of the duty as appear to him to be expedient [419]

NOTES

The purpose of this section is to ensure that the powers of local education authorities and of the managers or governors of county and voluntary schools are not exercised unreasonably

In the case of duties imposed by or under the Act which are not made contingent upon the opinion of the authority or the managers or governors, the powers of the Minister to enforce their performance if necessary by *mandamus*, are contained in section 99, p 237, *post*, and are by no means unusual

The direct control by a Government Department of a local authority's discretionary powers is, however, novel and represents a departure from a long established principle, although in the past various Departments have sought to control the exercise of local authorities of certain of their discretionary functions by the threat to withhold grants and by other means

The view of the Government however, as expressed by the Lord Chancellor in the House of Lords, is that the educational system of the country which is, in part at least, concentrated in the Ministry of Education, though it works through the local education authorities and other bodies, ought not to admit of a completely unreasonable exercise of a discretion

The section is very wide in its application, though it was suggested in the House of Lords that it would only be necessary to resort to it in exceptional cases Local education authorities will, no doubt, watch carefully any attempt on the part of the Minister to interfere unduly with their freedom

(a) **"Person"**—By section 19 of the Interpretation Act, 1889, 18 Halsbury's Statutes 1001, in every Act passed after the commencement of that Act, unless the contrary intention appears, this expression includes any body of persons corporate or unincorporate

(b) **"Or otherwise".**—It is not necessary for the Minister to wait for a complaint before taking action under this section, and he is free to act no matter how he received the information on which his subsequent actions are based

(c) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267 *post*

(d) **"Managers or governors"**—See note (d) to section 17, p 122, *ante*

(e) **"Any county or voluntary school"**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p 113, *ante*

(f) **"Unreasonably"**—The interpretation of this term is a matter for the Minister, and though no appeal lies to any court from his decision, it will be possible to question the legality of such a decision, *i e*, as to whether it is within the terms of the section In this connection though the doctrine of *ultra vires* is not properly to be used in relation to the acts of a corporation sole, a comparison may be made with the use of the term 'unreasonable' in connection with the relationship of the doctrine of *ultra vires* to the byelaws of local authorities (see title '*Ultra Vires*," Encyclopaedia of Local Government Law and Administration, vol XIII, p 259)

(g) **"Directions"**—As to the revocation or variation of any such directions, see section 111 p 254 *post*

69. Powers of Minister as to medical examinations and inspections.— (1) The Minister may make regulations (a) as to the conduct of medical examinations (b) and medical inspections (c) for the purposes of this Act and such regulations may, in particular, make provision requiring that any class of such examinations or inspections shall be conducted by duly qualified medical practitioners having such special qualifications or

experience as may be prescribed, or shall be conducted by a duly qualified medical practitioner selected with the approval of the Minister. [420]

(2) Where any question is referred to the Minister under this Part of this Act (d), then, if in the opinion of the Minister the examination of any pupil (e) by a duly qualified medical practitioner appointed for the purpose by him would assist the determination of the question referred to him, the Minister may by notice in writing (f) served on the parent (g) of that pupil, or if that pupil is in attendance at a county college (h) upon him, require the parent to submit him, or require him to submit himself, as the case may be, for examination by such a practitioner; and if any person on whom such a notice is served fails without reasonable excuse to comply with the requirements thereof, he shall be liable on summary conviction (i) to a fine not exceeding five pounds. [421]

NOTES

This section is new.

Subsection (1) applies not only to medical examinations arising under section 34, p. 154, *ante*, in connection with the duty of local education authorities to ascertain what children require special educational treatment and section 57, p. 192, *ante*, in relation to the duty of local education authorities to report to the local authority under the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 160, children who are found to be incapable of receiving education at school, but also to medical inspections arising under section 48, p. 179, *ante*, which requires local education authorities to provide (*inter alia*) for the medical inspection of pupils at maintained schools and county colleges.

It is not entirely clear whether the examinations to be conducted under section 54, p. 188, *ante*, come within the scope either of medical examinations or medical inspections. It may be that they are neither, although section 114 (1), p. 255, *post*, in defining the term "medical inspection" refers to inspection by *or under the directions of* a medical officer of the authority.

Subsection (2) of the section enables the Minister to require any pupil to submit to a medical examination if a question is referred to the Minister under Part II of the Act and the Minister thinks that a medical examination would serve a useful purpose.

(a) **"Regulations".**—As to the making of regulations under the Act, see section 112, p. 254, *post*.

(b) **"Medical examinations".**—See sections 34 and 57, pp. 154 and 192, *ante*.

(c) **"Medical inspections"**—See section 48, p. 179, *ante*. The expression "medical inspection" is defined by section 114 (1), p. 255, *post*, as inspection by or under the directions of a medical officer of a local education authority or by a person registered under the Dentists Act, 1878; 11 Halsbury's Statutes 679, employed or engaged, whether regularly or for the purposes of any particular case, by a local education authority.

(d) **"Where any question is referred to the Minister under this Part of this Act".**—See sections 38 (2), p. 160, *ante* (withdrawal of registered pupil from special school), 44 (8), p. 174, *ante* (exemption from compulsory attendance for further education), and 57 (3), p. 192, *ante* (report that a child has been found incapable of receiving education at school).

(e) **"Any pupil".**—The term "pupil", where used without qualification, is defined by section 114 (1), p. 255, *post*, as a person of any age for whom education is required to be provided under the Act. The questions which may be referred to the Minister, however, and are mentioned in note (d) *supra*, relate only to children and young persons.

(f) **"Notice in writing".**—As to the service of notices, see section 113, p. 254, *post*.

(g) **"Parent".**—By section 114 (1), p. 255, *post*, this word, in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

(h) **"County college".**—As to the definition and provision of county colleges, see section 43, p. 171, *ante*.

(i) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; 11 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881; *ibid.* 352. See section 11 of the Act of 1848, *ibid.* 278, as to the limitation of time for summary proceedings

PART III

INDEPENDENT SCHOOLS

70. Registration of independent schools.—(1) The Minister shall appoint one of his officers to be Registrar of Independent Schools; and it shall be the duty of the Registrar of Independent Schools to keep a register of all independent schools (a), which shall be open to public inspection at all reasonable times, and, subject as hereinafter provided, to register therein any independent school of which the proprietor (b) makes application for the purpose in the prescribed manner (c) and furnishes the prescribed particulars:

Provided that—

(*a*) no independent school shall be registered if, by virtue of an order made under the provisions hereinafter contained (d), the

proprietor is disqualified (e) from being the proprietor of an independent school or the school premises (f) are disqualified (g) from being used as a school, or if the school premises are used or proposed to be used for any purpose for which they are disqualified by virtue of any such order; and

(*b*) the registration of any school shall be provisional only until the Minister, after the school has been inspected on his behalf under the provisions of Part IV of this Act (h), gives notice (i) to the proprietor that the registration is final. [422]

(2) If the Minister is satisfied that he is in possession of sufficient information with respect to any independent school or any class of independent schools, and that registration of that school or the schools comprised in that class is unnecessary, the Minister may by order exempt (k) that school or schools of that class from registration, and any school so exempted shall be deemed to be a registered school (l). [423]

(3) If after the expiration of six months from the date of the commencement of this Part of this Act (m) any person (n)—

(*a*) conducts an independent school (whether established before or after the commencement of that Part) which is not a registered school or a provisionally registered school (o); or

(*b*) being the proprietor of an independent school does any act calculated to lead to the belief that the school is a registered school while it is a provisionally registered school;

he shall be liable on summary conviction (p) to a fine not exceeding twenty pounds or in the case of a second or subsequent conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine. [424]

(4) The Minister may make regulations (q) prescribing the particulars to be furnished to the Registrar of Independent Schools by the proprietors of such schools, and such regulations may provide for the notification to the Registrar of any changes in the particulars so furnished and as to the circumstances in which the Minister may order the name of any school to be deleted from the register in the event of the Registrar being unable to obtain sufficient particulars thereof. [425]

NOTES

Part III of the Act will come into operation on such date after 1st April, 1945, as His Majesty may by Order in Council appoint for the commencement thereof (section 119, p. 267, *post*).

This and the five succeeding sections which are comprised in Part III represent almost entirely new legislation.

The *White Paper on Educational Reconstruction* (Cmd. 6458 of 1943, at pp. 27–28) refers to the subject-matter of these provisions as follows:—

"While the State does not claim a monopoly in the conduct of education, it cannot divest itself of all responsibility for those children whose parents prefer to have them educated in schools outside the public system, and such parents are entitled to have some assurance that the independent schools of their choice are sufficiently well found and staffed to fulfil the educational purposes which they purport to do. This principle receives some recognition in the Education Act of 1918. Under that Act the proprietors of all independent schools were required to furnish certain information to the Board of Education, and it was laid down that it should not be a defence in school attendance proceedings that the child was attending an independent school unless the school was open to inspection either by the local education authority or the Board.

If the purpose of these provisions was to bring independent schools under satisfactory supervision, they have proved ineffective. At the present time anybody, whatever his or her qualifications, can start an independent school in any building and, unless the use of the building constitutes a nuisance under the Public Health Act, its improvement or closure cannot be obtained. A Departmental Committee which investigated the matter in 1931–32 found that, while many independent schools were doing excellent work and the majority were above serious reproach, there were a number which were so defective, both structurally and educationally, as to be harmful to the mental and physical welfare of their pupils. A larger number were seriously deficient and inefficient. The gross scandal of Dotheboys Hall has disappeared, but from time to time prosecutions in the Police Court reveal isolated instances of cruelty and neglect. It is only fair to reputable institutions that these unworthy survivors of a by-gone age should be cleared away.

In accordance with the principles advocated in the Departmental Committee's Report, *it is proposed to require that every independent school shall be open to inspection by the Board and registered on a list kept by them.* Schools which are considered by the Board to be open to objection because the premises are unsuitable, the accommodation inadequate, the instruction inefficient or the proprietor or a member of the teaching staff not a fit person

to have the charge of children, will not be allowed to continue unless the defects complained of are remedied within a specified period To ensure that reasonable liberty shall remain for those schools outside the public system, the proprietor will have the right to appeal against the Board's decision to an independent Tribunal'

The six sections contained in Part III of the Act implement the proposals outlined in the White Paper Subsection (1) of this section provides for the establishment of a register of private schools and sections 71–73, pp 208 to 211, *post*, contains provisions enabling the Minister to deal with schools where the premises are unsuitable, the accommodation inadequate, the instruction inefficient or the proprietor, or a member of the teaching staff, not a fit person to have the charge of children Section 71, *supra*, provides that such defects are to be brought to the notice of the person concerned by means of a notice of complaint served by the Minister whilst section 72, p 209, *post*, gives the person upon whom such a notice is served the right of appeal to an independent tribunal constituted in accordance with the Sixth Schedule, p 287, *post* Section 74 (1), p 212, *post*, makes provision for the removal of disqualifications where circumstances change

Section 77, p 213, *post* (in Part IV of the Act) provides (*inter alia*) for the inspection of private schools and it is because the new arrangements cannot be put into effect until the necessary staff of inspectors is available that the date on which Part III will come into operation is to fixed by Order in Council under section 119, p 267, *post*

(a) **"Independent schools".**—Section 114 (1), p 255, *post*, defines the expression "independent school" as any school at which full time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age), not being a school maintained by a local education authority or a school in respect of which grants are made by the Minister to the proprietor of the school

(b) **"The proprietor".**—By section 114 (1), p 255 *post*, this expression, in relation to any school, means the person or body of persons responsible for the management of the school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools, includes any person or body of persons proposing to be so responsible

(c) **"In the prescribed manner".**—As used here and subsequently in this section the word "prescribed", by section 114 (1), p 255, *post*, means prescribed by regulations made by the Minister Power to make such regulations is given specifically in subsection (4) of this section

(d) **"An order made under the provisions hereinafter contained".**—This refers primarily to an order made by the Independent Schools Tribunals under section 72, p 209, *post*, but may also relate to an order of the Minister made under regulations which the Minister is empowered to make by virtue of subsection (4) of this section

(e) **"The proprietor is disqualified".**—See section 73 (3), p 211, *post*

(f) **"School premises".**—By section 114 (1), p 255, *post* "premises", in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house

(g) **"The school premises are disqualified".**—See section 73 (2), p 211, *post*

(h) **"After the school has been inspected on his behalf under the provisions of Part IV of this Act".**—Section 77, p 213, *post* imposes a duty upon the Minister to cause inspections to be made of every educational establishment (as defined in subsection (1) of that section) at such intervals as appear to him to be appropriate As to the penalty for obstructing an inspector, see subsection (4) of that section

(i) **"Notice".**—As to the service of notices, see section 113, p 254, *post*

(k) **"May by order exempt".**—As to the revocation or variation of such an order, see section 111, p 254, *post* Further power to make orders is given to the Minister by subsection (4) of this section

(l) **"Registered school".**—Section 114 (1), p 255 *post*, defines a registered school as an independent school registered in the register of independent schools, whereof the registration thereof is final

(m) **"The date of the commencement of this Part of this Act".**—See section 119, p 267, *post*, and the general note to this section

(n) **"Any person".**—By section 19 of the Interpretation Act, 1889, 18 Halsbury's Statutes 1001, in every Act passed after the commencement of that Act, unless the contrary intention appears, this expression includes any body of persons corporate or unincorporate

(o) **"Provisionally registered school".**—Section 114 (1), p 255, *post*, defines this term as an independent school registered in the register of independent schools, whereof the registration is provisional only

(p) **"On summary conviction".**—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899, 11 Halsbury's Statutes 270, 323, 355, 363 and the Summary Jurisdiction (Process) Act, 1881, *ibid* 352 See section 11 of the Act of 1848 *ibid* 278, as to the limitation of time for summary proceedings

(q) **"Regulations".**—As to the making of such regulations, see section 112, p 254, *post*

71. Complaints.—(1) If at any time the Minister is satisfied that any registered or provisionally registered school (a) is objectionable upon all or any of the following grounds—

(*a*) that the school premises (b) or any parts thereof are unsuitable for a school (c),

(*b*) that the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages, and sex of the pupils (d) attending the school,

(*c*) that efficient and suitable instruction (e) is not being provided at the school having regard to the ages and sex of the pupils attending thereat,

(*d*) that the proprietor (f) of the school or any teacher employed therein

is not a proper person to be the proprietor of an independent school or to be a teacher in any school, as the case may be,

the Minister shall serve upon the proprietor of the school a notice of complaint (g) stating the grounds of complaint together with full particulars of the matters complained of, and, unless any of such matters are stated in the notice to be in the opinion of the Minister irremediable, the notice shall specify the measures necessary in the opinion of the Minister to remedy the matters complained of, and shall specify the time, not being less than six months after the service of the notice, within which such measures are thereby required to be taken [426]

(2) If it is alleged by any notice of complaint served under this section that any person employed as a teacher at the school is not a proper person to be a teacher in any school, that person shall be named in the notice and the particulars contained in the notice shall specify the grounds of the allegation, and a copy of the notice shall be served upon him [427]

(3) Every notice of complaint served under this section and every copy of such a notice so served shall limit the time, not being less than one month after the service of the notice or copy, within which the complaint may be referred to an Independent Schools Tribunal (h) under the provisions hereinafter contained (i) [428]

NOTES

As to the provisions of Part III of the Act generally, see the general note to section 70, p 206, *ante*

(a) **"Any registered or provisionally registered school"**.—By section 114 (1), p 255, *post*, the terms "registered school" and "provisionally registered school" are defined as independent schools registered in the register of independent schools, whereof the registration is, on the one hand, final, and on the other, provisional only

(b) **"School premises"**.—By section 114 (1), p 255, *post*, "premises" in relation to any school includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house

(c) **"School"**.—By section 114 (1), p 255, *post*, this term means, for the purposes of this section, an institution for providing primary or secondary education, or both primary and secondary education, being an independent school, the last mentioned term also being defined by that subsection as any school at which full time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age), not being a school maintained by a local education authority or a school in respect of which grants are made by the Minister to the proprietor of the school

(d) **"Pupils"**.—By section 114 (1), p 255, *post*, "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act

(e) **"Efficient and suitable instruction"**.—Section 36, p 157, *ante*, requires the parent of every child of compulsory school age to cause him to receive efficient full time education suitable to his age, ability and aptitude, either by regular attendance at school or otherwise It would appear from that section that the parent's duty thereunder is discharged by causing his child to attend school, irrespective of the efficiency or suitability of the education provided at the school In the event of the education provided at an independent school being inefficient or unsuitable, having regard to the age and sex of the child, it then becomes the duty of the Minister to take action under this section—see, on this point, note (h) to section 36, *ante*

(f) **"Proprietor"**.—Section 114 (1), p 255, *post*, provides that in relation to any school this term means the person or body of persons responsible for the management of the school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools, includes any person or body of persons proposing to be so responsible

(g) **"A notice of complaint"**.—As to the service of notices under this Act, see section 113, p 254, *post*

(h) **"Independent Schools Tribunal"**.—Section 72 (1), p 209, *post*, provides that an Independent Schools Tribunal shall be constituted in accordance with the Sixth Schedule, p 287, *post*

(i) **"Under the provisions hereinafter contained"**.—See section 72, p 209, *post* If the complaint is not referred to an Independent Schools Tribunal under subsection (1) of that section within the time limited, the Minister may, by subsection (3), *ibid*, make any order which such a tribunal would have had power to make (see subsection (2), *ibid*) if the complaint had been so referred

72. Determination of complaints.—(1) Any person (a) upon whom a notice of complaint or a copy of such a notice is served (b) under the last foregoing section may, within the time limited by the notice (c), appeal therefrom by referring the complaint, in such manner as may be provided by rules made under this Part of this Act (d), to an Independent Schools Tribunal constituted in accordance with the provisions of the Sixth Schedule to this Act (e) [429]

O

(2) Upon a complaint being referred to an Independent Schools Tribunal the tribunal shall, after affording to all parties concerned an opportunity of being heard (f), and after considering such evidence as may be tendered by them or on their behalf, have power—

(*a*) to order (g) that the complaint be annulled :

(*b*) to order that the school (h) in respect of which the notice of complaint was served be struck off the register (i) :

(*c*) to order that the school be so struck off unless the requirements of the notice, subject to such modifications, if any, as may be specified in the order are complied with to the satisfaction of the Minister before the expiration of such time as may be specified in the order :

(*d*) if satisfied that the premises (k) alleged by the notice of complaint to be unsuitable for use as a school or any part of such premises are in fact unsuitable for such use, by order to disqualify the premises or part from being so used, or, if satisfied that the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages and sex of the pupils attending the school, by order to disqualify the premises from being used as a school for pupils exceeding such number or of such age or sex as may be specified in the order ·

(*e*) if satisfied that any person alleged by the notice of complaint to be a person who is not proper to be the proprietor of an independent school or to be a teacher in any school is in fact such a person, by order to disqualify that person from being the proprietor of any independent school or from being a teacher in any school, as the case may be. [430]

(3) Where a notice of complaint has been served under this Act on the proprietor of any school and the complaint is not referred by him to an Independent Schools Tribunal within the time limited in that behalf by the notice, the Minister shall have power to make any order (l) which such a tribunal would have had power to make if the complaint had been so referred :

Provided that, if it was alleged by the notice of complaint that any person employed as a teacher at the school is not a proper person to be a teacher in any school and that person has, within the time limited in that behalf by the copy of the notice served upon him, referred the complaint to an Independent Schools Tribunal, the Minister shall not have power to make an order requiring his dismissal or disqualifying him from being a teacher in any school. [431]

(4) Where by virtue of an order made by an Independent Schools Tribunal or by the Minister any person is disqualified either from being the proprietor of an independent school or from being a teacher in any school, then, unless the order otherwise directs, that person shall, by virtue of the order, be disqualified both from being the proprietor of an independent school and from being a teacher in any school. [432]

NOTES

As to the provisions of Part III of the Act generally see the general note to section 70, p. 206, *ante*.

(a) **"Any person".**—See note (n) to section 70, p. 208, *ante*.

(b) **"Upon whom a notice of complaint or a copy of such a notice is served".**—Provision is made for the service of notices of complaint upon the proprietors of schools and copies thereof upon teachers employed therein by section 71, p. 208, *ante*, in the circumstances mentioned in that section. As to the service of notices, see section 113, p. 254, *post*.

(c) **"Within the time limited by the notice".**—By section 71 (3), p. 209, *ante*, the time so limited shall not be less than one month after the service of the notice or copy thereof.

(d) **"Rules made under this Part of this Act".**—As to the making of such rules by the Lord Chancellor, with the concurrence of the Lord President of the Council, and the purposes for which they may be made (including the manner of making appeals), see section 75 (1), p. 212, *post*.

(e) **"An Independent Schools Tribunal constituted in accordance with the provisions of the Sixth Schedule to this Act".**—The Sixth Schedule, p. 287, *post*, provides for

the appointment of two panels, a legal panel, by the Lord Chancellor, of persons available to act when required as chairman of any Independent Schools Tribunal, and an educational panel, appointed by the Lord President of the Council, of persons available to act when required as members of any such Tribunal. Where any appeal under this section is required to be determined a tribunal, consisting of a chairman and two other members, will be specially appointed from the two panels by the Lord Chancellor and the Lord President of the Council respectively, in accordance with the rules to be made by the Lord Chancellor under section 75 (1), p. 212, *post*.

(*f*) "**After affording to all parties concerned an opportunity of being heard**".—Provision may be made, by the rules which the Lord Chancellor is, by section 75 (1), p 212, *post*, empowered to make (*inter alia*) as to proceedings before Independent Schools Tribunals and matters incidental to or consequential on such proceedings, and the rules may require any such Tribunal to sit at such places as may be directed in accordance with the rules, and may make provision as to appearance before such Tribunals by counsel or solicitor

(*g*) "**Order**".—This is not an order to which section 111, p. 254, *post*, applies, though that section will apply to a similar order made by the Minister under subsection (3) of this section. See also section 74, p 212, *post*, as to the removal of disqualifications imposed by such orders

(*h*) "**School**".—See note (c) to section 71, p 209, *ante*.

(*i*) "**Struck off the register**".—As to the effect of an order (other than an order under paragraph (a) of this subsection) and the penalties for failure to comply therewith, see section 73, p. 211, *post*

(*k*) "**Premises**".—See note (b) to section 71, p. 209, *ante*.

(*l*) "**The Minister shall have power to make any order**".—See note (g), *supra*.

73. Enforcement.— (1) Where an order (a) is made by the Minister or by an Independent Schools Tribunal (b) directing that any school (c) be struck off the register (d), the Registrar of Independent Schools (e) shall as from the date on which the direction takes effect strike the school off the register. [433]

(2) If any person (f) uses any premises (g) for purposes for which they are disqualified (h) by virtue of any order made under this Part of this Act, that person shall be liable on summary conviction (i) to a fine not exceeding twenty pounds or in the case of a second or subsequent conviction (whether in respect of the same or other premises) to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine [434]

(3) If any person acts as the proprietor (k) of an independent school (l), or accepts or endeavours to obtain employment as a teacher in any school (m), while he is disqualified from so acting or from being so employed by virtue of any such order as aforesaid, he shall be liable on summary conviction to a fine not exceeding twenty pounds or in the case of a second or subsequent conviction to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine. [435]

(4) No proceedings shall be instituted for an offence against this Part of this Act except by or on behalf of the Minister. [436]

NOTES

As to the provisions of this Part of the Act generally, see the general note to section 70, p. 206, *ante*

(a) "**Order**".—Where a complaint of which notice is given by the Minister under section 71 (1), p 208, *ante*, is referred to an Independent Schools Tribunal under section 72 (1), p. 209, *ante*, the Tribunal may make an order of any of the kinds mentioned in paragraphs (*a*) to (*e*) of subsection (2) of the latter section. Where the complaint is not so referred within the time limited by the notice, the Minister may under subsection (3), *ibid.*, make a similar order. Section 111, p. 254, *post*, as to the revocation or variation of orders and directions, will apply to orders made by the Minister but not to those made by the Independent Schools Tribunal, but see also section 74, p. 212, *post*, as to the removal of disqualifications imposed by such orders

(b) "**Independent Schools Tribunal**".—See note (e) to section 72, p 212, *ante*.

(c) "**School**".—See note (c) to section 71, p. 209, *ante*

(d) "**Struck off the register**".—See paragraph (b) of section 72 (2), p. 210, *ante*, and note (i) to that section.

(e) "**The Registrar of Independent Schools**".—Section 70 (1), p 206, *ante*, requires the Minister to appoint one of his officers to be Registrar of Independent Schools and specifies his duties.

(f) "**Any person**".—By section 19 of the Interpretation Act, 1889, 18 Halsbury's Statutes 1001, in every Act passed after the commencement of that Act, unless the contrary intention appears, this expression includes any body of persons corporate or unincorporate

(g) "**Any premises**".—By section 114 (1), p. 255, *post*, "premises", in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house

(h) "**For purposes for which they are disqualified**".—See paragraphs (*b*), (*c*) and (*d*) of section 72 (2), p 210, *ante*

(i) "**On summary conviction**".—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899, 7 Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction

(Process) Act, 1881 ; *ibid* 352 See section 11 of the Act of 1848 as to the limitation of time for summary proceedings ; *ibid* 278

(k) **" Proprietor "**.—By section 114 (1), p 255, *post* this term, in relation to any school, means the person or body of persons responsible for the management of the school, and for the purposes of the provisions of the Act relating to applications for the registration of independent schools, includes any person or body of persons proposing to be so responsible

(l) **" An independent school "**.—By section 114 (1), p 255, *post*, an independent school means any school at which full time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age), not being a school maintained by a local education authority or a school in respect of which grants are made by the Minister to the proprietor of the school

(m) **" Any school "**.—Here the expression is not limited to independent schools and refers to schools of every type referred to in the definition thereof in section 114 (1), p 255, *post*. Such a person is not, however, prohibited by the subsection from accepting or endeavouring to obtain employment in a county college or any other educational institution or establishment not coming within the definition of a school

74. Removal of disqualifications.—(1) If on the application of any person (a) the Minister is satisfied that any disqualification imposed by an order made under this Part of this Act is, by reason of any change of circumstances, no longer necessary, the Minister may by order (b) remove the disqualification [437]

(2) Any person who is aggrieved by the refusal of the Minister to remove a disqualification so imposed may, within such time after the refusal has been communicated to him as may be limited by rules made under this Part of this Act (c), appeal to an Independent Schools Tribunal (d) [438]

NOTES

As to the provisions of this Part of the Act generally, see the general note to section 70, p 206, *ante*

(a) **" Any person "**.—By section 19 of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1001, in every Act passed after the commencement of that Act, unless the contrary intention appears, this expression includes any body of persons corporate or unincorporate

(b) **" Order "**.—As to the revocation or variation of such an order, see section 111, p 254, *post* It is doubtful whether the proviso to that section would operate so as to enable an appeal to be made under subsection (2) of this section against the revocation or variation of such an order, though it would be manifestly unjust that such an appeal should not be permissible

(c) **" Rules made under this Part of this Act "**.—See section 75 (1), p 212, *post* The rules which may be made under that section may also make provision as to the manner of making appeals to the Independent Schools Tribunals and for other purposes

(d) **" Independent Schools Tribunal "**.—Section 72 (1), p 209, *ante*, provides that independent schools tribunals are to be constituted in accordance with the Sixth Schedule, p 287, *post*

75. Proceedings before Independent Schools Tribunals and matters relating thereto.—(1) The Lord Chancellor may, with the concurrence of the Lord President of the Council, make rules as to the practice and procedure to be followed with respect to the constitution of Independent Schools Tribunals (a), as to the manner of making appeals to such tribunals, and as to proceedings before such tribunals (b) and matters incidental to or consequential on such proceedings, and, in particular, such rules may make provision requiring any such tribunal to sit at such places as may be directed in accordance with the rules, and may make provision as to appearance before such tribunals by counsel or solicitor and as to the payment to members of such tribunals, as part of the expenses of the Minister under this Act, of such remuneration and allowances as may, with the consent of the Treasury, be provided for by the rules. [439]

(2) The provisions of the Arbitration Acts, 1889 to 1934, shall not apply to any proceedings before an Independent Schools Tribunal except so far as any provisions thereof may be applied thereto with or without modifications by rules made under this section [440]

(3) Every order of an Independent Schools Tribunal (c) shall be registered by the Registrar of Independent Schools (d) and shall be open to public inspection at all reasonable times [441]

NOTES

As to the provisions of this Part of the Act generally, see the general note to section 70, p. 206, *ante*

(a) **" The constitution of Independent Schools Tribunals "**.—Section 72 (1), p 209, *ante*, provides for the constitution of independent schools tribunals in accordance with the provisions of the Sixth Schedule, p. 287, *post*

(b) **" Appeals to such tribunals "**.—See sections 72 (1) and 74 (2), pp. 209 and 212, *ante*.

(c) **" Every order of an Independent Schools Tribunal "**.—See section 72 (2), p. 209, *ante*. No provision is made, however, for the registration of similar orders made by the Minister under subsection (3) of that section, or of orders under section 74 (1), p. 212, *ante*, removing disqualifications imposed under this Part of the Act, though the Registrar of Independent Schools, as an officer of the Minister, will doubtless take cognisance of such orders. If, however, the requirement that orders of independent schools tribunals shall be open to public inspection is for the purpose of enabling members of the public to avoid offering employment to, or allowing a child to be educated by, a person who is disqualified it will for this reason lose a great deal of its value.

(d) **" Registrar of Independent Schools "**.—Section 70 (1), p. 206, *ante*, requires the Minister to appoint one of his officers to be Registrar of Independent Schools and specifies his duties.

PART IV
GENERAL

GENERAL PRINCIPLE TO BE OBSERVED BY MINISTER AND LOCAL EDUCATION AUTHORITIES

76. Pupils to be educated in accordance with wishes of parents.—In the exercise and performance of all powers and duties conferred and imposed on them by this Act the Minister and local education authorities (a) shall have regard (b) to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils (c) are to be educated in accordance with the wishes of their parents (d). **[442]**

NOTES

This section re-enacts, in revised language, and considerably extends the application of the conditions laid down in section 19 of the Education Act, 1921, as amended by the Education (Necessity of Schools) Act, 1933. From its former application to the problem of determining the necessity of elementary schools, the principle enunciated in the section has now been applied to all the functions not only of local education authorities but of the Minister as well. Verbal, though possibly not legal, emphasis (since the Minister is to be the arbiter) is now laid upon the importance of having regard to the wishes of the parents, subject to their being compatible with—

(*a*) the need for providing efficient instruction and training (which takes the place of " the interest of secular instruction "), and

(*b*) the avoidance of unreasonable expense to the authority (which replaces " the economy of the rates ").

The inclusion of this principle as a separate section in Part IV of the Act, which, along with Part II, comes into operation on 1st April, 1945 (section 119, p. 267, *post*), means that it will exercise effect throughout all the provisions of the Act relating not only to primary and secondary but to further education as well (so far as it relates to the education of young persons).

(a) **" Local education authorities "**.—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **" Shall have regard "**.—Although these words impose a duty upon local education authorities it is difficult to see how the Minister could, under section 99, p. 237, *post*, enforce it directly, in view of its vagueness. Any supposed failure to have regard to the principles of the section must, however, be related either to the performance of a duty imposed specifically by some other provision of the Act or to the exercise of a power to given. Therefore, though it would not be practicable to enforce the section directly, the Minister will have regard to the principle enunciated in it in taking any action under either section 99, p. 237, *post*, or section 68, p. 205, *ante*.

(c) **" Pupils "**.—By section 114 (1), p. 255, *post*, the term " pupil ", where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(d) **" Parents "**.—By section 114 (1), p. 255, *post*, the term " parent ", in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person.

MISCELLANEOUS PROVISIONS

77. Inspection of educational establishments.—(1) In this section the expression " educational establishment " means a school (a), a county college (b), any establishment which under a scheme of further education made and approved under this Act (c) is used for further education (d), and any training college or other institution (e) being a training college or other institution maintained (f) by a local education authority (g); and if the persons responsible for the management of any institution which is not an educational establishment within the foregoing definition request the Minister or any local education authority to cause an inspection of that institution to be made under the powers conferred by this section, the

institution shall, for the purposes of that inspection, be deemed to be also included within that definition (h) [443]

(2) It shall be the duty of the Minister to cause inspections to be made of every educational establishment at such intervals as appear to him to be appropriate, and to cause a special inspection of any such establishment to be made whenever he considers such an inspection to be desirable; and for the purpose of enabling such inspections to be made on behalf of the Minister inspectors may be appointed (i) by His Majesty on the recommendation of the Minister, and persons may be authorised by the Minister to assist such inspectors and to act as additional inspectors

Provided that the Minister shall not be required by virtue of this subsection to cause inspections to be made of any educational establishment during any period during which he is satisfied that suitable arrangements are in force for the inspection of that establishment otherwise than in accordance with this subsection (k) [444]

(3) Any local education authority may cause an inspection to be made of any educational establishment maintained by the authority, and such inspections shall be made by officers (l) appointed by the local education authority [445]

(4) If any person obstructs any person authorised to make an inspection in pursuance of the provisions of this section in the execution of his duty, he shall be liable on summary conviction (o) to a fine not exceeding twenty pounds, or, in the case of a second or subsequent conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine [446]

(5) Subject as hereinafter provided, the religious instruction given in any school maintained by a local education authority shall not be subject to inspection except by one of His Majesty's Inspectors or by a person ordinarily employed for the purpose of inspecting secular instruction either as an additional inspector appointed by the Minister or as an officer in the whole time employment of a local education authority.

Provided that the religious instruction given in a voluntary school (p) otherwise than in accordance with an agreed syllabus (q) shall not be subject to such inspection as aforesaid but may be inspected under arrangements made for that purpose by the managers or governors (r) of the school, or, in the case of a controlled school (s), by the foundation managers or foundation governors (t) thereof so, however, that such inspections shall not be made on more than two days in any year and not less than fourteen days' notice (u) of the dates fixed therefor shall be given to the local education authority [447]

(6) No pupil (x) who has been excused from attendance at religious worship or instruction (y) in a voluntary school in accordance with the provisions of this Act shall be required to attend the school on a day fixed for an inspection by arrangements made under the proviso to the last foregoing subsection [448]

NOTES

This section replaces the whole or parts of the following provisions of the law previously in force —

(1) Education Act, 1921, section 27 (1) (*c*); 7 Halsbury's Statutes 142, which required that every public elementary school should be open at all times to the inspection of any of His Majesty's inspectors, but prohibited them from inquiring into any religious instruction and from examining any scholar on religious knowledge or in any religious subject or book,

(2) *ibid*, section 29 (2) (*b*) 7 Halsbury's Statutes 143, which enabled the local authority to inspect non provided public elementary schools,

(3) *ibid*, section 63 (1) (*c*), 7 Halsbury's Statutes 165, which required schools certified as fit for providing elementary education for blind or deaf children or as schools for defective or epileptic children, to be open at all times to the inspection of His Majesty's inspectors and of any visitors authorised by any local education authority sending children to the school,

(4) *ibid*, section 76 (3), 7 Halsbury's Statutes 171, which required continuation schools provided by or in connection with a young person's employment to be open to inspection either by the local education authority or by the Board of Education at the option of the persons responsible for management,

(5) *ibid*, section 119, 7 Halsbury's Statutes 194, requiring that nursery schools should

(inter alia) be open to inspection by the local education authority as a condition of qualifying for grant; and

(6) *ibid.*, section 133; 7 Halsbury's Statutes 200, which enables the managers of any non-provided public elementary school to fix days for the inspection of the school or the examination of the scholars in religious as well as other subjects, by an inspector other than one of His Majesty's inspectors;

(7) *ibid.*, section 134; 7 Halsbury's Statutes 201, which enabled the Board of Education to inspect any school supplying secondary education and desiring to be inspected.

The present section makes several changes in the previous law, the following being the most important:—

(1) It becomes the Minister's duty to inspect every "educational establishment" as defined in the section; this covers every type of school, including independent schools, county colleges, any establishment used to provide further education under a scheme made and approved under the Act, and any training college or other institution maintained by a local education authority; and

(2) Inspectors, both of the Minister and the local education authority, may inspect religious instruction given in accordance with an agreed syllabus.

(a) "**School**".—Section 114 (1), p. 255, *post*, defines this term as an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by the local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school.

(b) "**County college**".—Section 43, p. 171, *ante*, defines this term as a centre approved by the Minister for providing for young persons who are not in full time attendance at any school or other educational institution such further education, including physical, practical and vocational training, as will enable them to develop their various aptitudes and capacities and will prepare them for the responsibilities of citizenship.

(c) "**A scheme of further education made and approved under this Act**".—See section 42, p. 170, *ante*.

(d) "**Further education**".—By section 41, p. 164, *ante*, this term means—

(*a*) full-time and part-time education for persons over compulsory school age; and

(*b*) leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose.

(e) "**Any training college or other institution**".—See section 62, p. 198, *ante*.

(f) "**Maintained**".—See the definition of this term in section 114 (1) and (2), p. 255, *post*.

(g) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(h) "**Deemed to be also included within that definition**".—If a request is made to the Minister under this subsection it becomes the duty of the Minister to cause inspections to be made at appropriate intervals. If, however, the request is made to the local education authority the authority is not compelled to cause inspections to be made (subsection (3) of this section).

(i) "**Inspectors may be appointed**".—It is because of the necessity of appointing an additional inspectorial staff under this subsection that it has not been possible to fix a date for the coming into operation of Part III of the Act, which provides for the registration of independent schools

(k) "**Otherwise than in accordance with this subsection**".—See subsection (3) of this section.

(*l*) "***Such inspection shall be made by officers***".—Under section 29 of the Education Act, 1921; 7 Halsbury's Statutes 43, the local education authority might arrange for the inspection of non-provided schools by any person authorised, including members of the authority or its education committee. It now appears that formal inspections caused to be made by a local education authority must be made by officers appointed by the authority, though managers and governors of voluntary schools would probably be wise to provide reasonable facilities for visits from members of the local education authority also.

(o) "**On summary conviction**".—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899, and the Summary Jurisdiction (Process) Act, 1881. See section 11 of the Act of 1848 as to the limitation of time for summary proceedings.

(p) "**Voluntary school**".—See section 9 (2), p. 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p. 113, *ante*.

(q) "**Otherwise than in accordance with an agreed syllabus**".—As to the provision of denominational instruction, see section 27 (1) (controlled schools) and 28 (1) (aided schools and special agreement schools), pp. 143 and 144, *ante*. By section 114 (1), p. 255, *post*, "agreed syllabus" means (subject to subsection (4) of that section) an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule, p. 286, *post*, and adopted or deemed to be adopted under that Schedule. As to the circumstances in which this form of instruction may or must be given, see sections 26 (county schools), 27 (6) (controlled schools) and 28 (1) (aided schools and special agreement schools), pp. 142, 143 and 144, *ante*.

(r) "**Managers or governors**".—See note (*d*) to section 17, p. 122, *ante*.

(s) "**Controlled school**".—See section 15, p. 113, *ante*.

(t) "**Foundation managers or foundation governors**".—By section 114 (1), p. 255, *post*, these terms, in relation to any voluntary school, means managers and governors appointed otherwise than by a local education authority or a minor authority for the purpose of securing, so far as is practicable, that the character of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto; and, unless the context otherwise requires, references in the Act to "managers" or "governors" are, in relation to any functions conferred or imposed exclusively on foundation managers or foundation governors, to be construed as references to such managers or governors.

(u) "**Not less than fourteen days' notice**".—As to the service of notices under the Act, see section 113, p. 254, *post*.

(x) "**Pupil**".—By section 114 (1), p. 255, *post*, this word, where used without qualification, means a person of any age for whom education is required to be provided under the Act.

(y) "**Excused from attendance at religious worship or instruction**".—See section 25 (4), p. 139, *ante*.

78. Provision of certain ancillary services for pupils not in attendance at schools maintained by local education authorities.—(1) Where under powers conferred by this Act (a) a local education authority (b) make special arrangements for any child (c) or young person (d) to receive primary or secondary education (e) otherwise than at school (f), the authority may provide for the medical inspection or medical treatment (g) of that pupil (h) as if he were in attendance at a school maintained (i) by the authority [449]

(2) A local education authority may with the consent of the proprietor (k) of any school in their area which is not a school maintained by the authority (l), and upon such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school make arrangements for securing—

(*a*) the provision of milk, meals and other refreshment (m) for pupils in attendance at the school and

(*b*) the provision for any registered pupil (n) at the school who is unable by reason of the inadequacy of his clothing to take full advantage of the education provided at the school, of such clothing (o) as is necessary for the purpose of ensuring that he is sufficiently clad while he remains a pupil at the school,

and may, with the consent of the proprietor of any school or other educational establishment (p) in their area which is not maintained by the authority, and upon such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school or establishment, make arrangements for securing the medical inspection of, and the provision of medical treatment for pupils (q) (being junior pupils or senior pupils (r)) in attendance at the school or establishment

Provided that any arrangements made under this subsection shall be such as to secure, so far as is practicable (s), that the expense incurred by the authority in connection with the provision under the arrangements of any service or article shall not exceed the expense which would have been incurred by them in the provision thereof if the pupil had been a pupil at a school maintained by them [450]

NOTES

This section is new law and subsection (2) is especially important in that it enables the benefits of the school meals and medical services to be extended to the pupils of direct grant and independent schools by agreement between the local education authority and the proprietor or responsible governing body

(a) "**Under powers conferred by this Act**".—See section 56, p 191, *ante*

(b) "**Local education authority**".—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267, *post*

(c) "**Child**".—By section 114 (1), p 255, *post*, this expression means a person who is not over compulsory school age

(d) "**Young person**".—By section 114 (1) p 255, *post*, this expression means a person over compulsory school age who has not attained the age of eighteen years, see also subsection (5) of that section as to the attainment of that age

(e) "**Primary or secondary education**".—Section 114 (1), p 255, *post*, provides that these terms have the meanings respectively assigned to them by section 8, p 97, *ante*, see paragraphs (*a*) and (*b*) of subsection (1) of that section

(f) "**Otherwise than at school**".—Section 114 (1), p 255, *post*, defines "school" as an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school

(g) "**Medical inspection or medical treatment**".—By section 114 (1), p 255, *post*, these terms are defined respectively as —

(1) meaning inspection by or under the directions of a medical officer of a local education authority or by a person registered under the Dentists Act, 1878, 11 Halsbury's Statutes 679, employed or engaged, whether regularly or for the purposes of any particular case, by a local education authority, and

(2) including treatment by any duly qualified medical practitioner or by any person registered under the Dentists' Act, 1878; 11 Halsbury's Statutes 679, but in relation to any pupil other than a pupil receiving primary or secondary education otherwise than at school under arrangements made by a local education authority, not including treatment in that pupil's home

Section 48, p 179, *ante*, makes provision for the medical inspection and treatment of pupils at schools and county colleges maintained by the local education authority, and section 74, p 212, *post*, contains certain supplementary provisions relating to medical inspection and treatment

(h) **"Pupil".**—Where used without qualification, this expression means, by section 114 (1), p. 255, *post*, a person of any age for whom education is required to be provided under the Act

(i) **"Maintained".**—By section 114 (1), p. 255, *post*, this term, in relation (*inter alia*) to a school, has the meaning assigned to it by subsection (2) of that section.

(k) **"Proprietor".**—Section 114 (1), p. 255, *post*, defines this expression, in relation to any school, as the person or body of persons responsible for the management of the school.

(l) **"Not a school maintained by the local education authority".**—As a result of the definition of "school" in section 114 (1), p 255, *post*, this phrase refers to independent schools and schools in respect of which grants are made by the Minister to the proprietor of the school.

(m) **"Milk, meals and other refreshment".**—As to the provision of milk, meals and other refreshment for pupils in attendance at schools and county colleges, see section 49, p 183, *ante*.

(n) **"Registered pupil".**—This term is defined by section 114 (1), p. 255, *post*, in relation to any school, as a pupil registered as such in the register kept in accordance with section 80, p. 218, *post*, but does not include any child who has been withdrawn from the school in the prescribed manner.

(o) **"Clothing".**—By section 114 (1), p. 255, *post*, "clothing" includes boots and other footwear. As to the provision of clothing at schools maintained by the local education authority, see section 51, p. 185, *ante*.

(p) **"Other educational establishment".**—This term is not defined in the present section, though it is defined by section 77 (1), p. 213, *ante*, for the purposes of that section only. See note (i) to section 47, p. 179, *ante*.

(q) **"Medical inspection of, and the provision of medical treatment for, pupils".**—See note (g), *supra*.

(r) **"Junior pupils or senior pupils".**—By section 114 (1), p. 255, *post*, these terms are defined respectively as—

(1) children who have not attained the age of twelve years; and

(2) persons who have attained the age of twelve years but have not attained the age of nineteen years.

As to the attainment of any particular age, see subsection (5) of that section.

(s) **"Shall be such as to secure, so far as is practicable".**—These words impose a duty upon the authority which will be enforceable by the Minister under section 99, p. 237, *post*.

79. Supplementary provisions as to medical inspection and treatment.—Every local education authority (a) shall furnish (b) to the Minister of Health such particulars as he may from time to time require of the arrangements made by the authority in the exercise of their functions relating to medical inspection and medical treatment (c); and that Minister may give to any such authority such directions (d) as to the discharge by the authority of those functions as appear to him to be expedient.

If arrangements are made for the exercise by the Minister (e) of any functions conferred or imposed by this section on the Minister of Health, then, while such arrangements are in force, this section shall have effect in relation to such functions as if for the references therein to the Minister of Health there were substituted references to the Minister. Any directions given in the exercise of functions under this section may be varied or revoked by the Minister by whom those functions are for the time being exercisable.

[451]

NOTES

This section is new in terms but not in practice, since under section 80 of the Education Act, 1921; 7 Halsbury's Statutes 174, local education authorities were required to obtain the sanction of the Minister of Health to the arrangements provided under that section. The general duties of local education authorities in relation to medical inspection and treatment are now imposed by section 48, p 179, *ante*, and additional powers in relation to children and young persons for whom education is provided otherwise than at school, and in relation to junior and senior pupils at schools and other educational establishments not maintained by the authority, are given by section 78, p. 216, *ante*.

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*.

(b) **"Shall furnish".**—As to the enforcement of this duty, see section 99, p. 237, *post*, in addition to this section. It should be noted that although the duty is to furnish information to the Minister of Health unless arrangements referred to in the section are made for the discharge by the Minister of Education of the functions of the Minister of Health, the enforcement of the duty under that section is in the hands of the Minister of Education.

(c) **"Medical inspection and medical treatment".**—By section 114 (1), p. 255, *post*, these terms are defined respectively as—

(1) meaning inspection by or under the directions of a medical officer of a local education authority or by a person registered under the Dentists Act, 1878; 11 Halsbury's Statutes 679, employed or engaged, whether regularly or for the purposes of any particular case, by a local education authority; and

(2) including treatment by any duly qualified medical practitioner or by any person registered under the Dentists Act, 1878; 11 Halsbury's Statutes 679, but, in relation to any pupil other than a pupil receiving primary or secondary education otherwise than at school under arrangements made by a local education authority not including treatment in that pupil's home.

(d) "**Directions**".—As to the revocation or variation of any such directions, see section 111, p. 254, *post*, and the latter part of the second paragraph of this section which somewhat extends the scope of that section.

(e) "**If arrangements are made for the exercise by the Minister**".—Compare this provision with the second paragraph of section 100 (2), p. 239, *post*.

80. Registration of pupils at schools.—(1) The proprietor (a) of every school (b) (that is to say in the case of a county school (c) or voluntary school (d) the managers or governors (e) thereof) shall cause to be kept (f) in accordance with regulations made by the Minister (g) a register containing the prescribed particulars (h) with respect to all persons of compulsory school age (i) who are pupils (k) at the school, and such regulations may make provision for enabling such registers to be inspected, for enabling extracts therefrom to be taken for the purposes of this Act by persons duly authorised in that behalf under the regulations, and for requiring the persons by whom any such register is required to be kept to make to the Minister, and to local education authorities (l), such periodical or other returns as to the contents thereof as may be prescribed. [452]

(2) If any person contravenes or fails to comply with any requirement imposed on him by regulations made under this section, he shall be liable on summary conviction (m) to a fine not exceeding ten pounds [453]

(3) The regulations made under this section shall prescribe the procedure by which a child may become a registered pupil (n) and the procedure by which a child (o) (not being a child with respect to whom a school attendance order (p) is in force) may be withdrawn (q) from any school at which he is a registered pupil and shall make provision for the deletion from the register of the name of any pupil so withdrawn. [454]

NOTES

This section is new in terms but is derived from sections 147, 153 and 154 of the Education Act, 1921; 7 Halsbury's Statutes 204, 206. Under section 37, p. 158, *ante*, any child with respect to whom the local education authority is not satisfied that he is receiving efficient full-time education suitable to his age, ability and aptitude may be required by means of a school attendance order to become a registered pupil at a school named in the order; but, by this section, *every child who attends school will automatically become a registered pupil at that school.*

(a) "**Proprietor**".—By section 114 (1), p. 255, *post*, this expression, in relation to any school, means the person or body of persons responsible for the management of the school.

(b) "**Every school**".—Section 114 (1), p. 255, *post*, defines the term "school" as an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school.

(c) "**County school**".—See section 9 (2), p. 100, *ante*.

(d) "**Voluntary school**".—See section 9 (2), p. 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p. 113, *ante*.

(e) "**Managers or governors**".—See note (d) to section 17, p. 122, *ante*.

(f) "**Shall cause to be kept**".—As to the enforcement of his duty, apart from the penalty imposed by subsection (2) of this section, see section 99, p. 237, *post*.

(g) "**In accordance with regulations made by the Minister**".—As to the making of such regulations, see section 112, p. 254, *post*.

(h) "**Prescribed particulars**".—By section 114 (1), p. 255, *post*, "prescribed" means prescribed by regulations made by the Minister.

(i) "**Compulsory school age**".—Section 114 (1), p. 255, *post*, provide that this expression has, subject to the provisions of section 38, p. 160, *ante*, the meaning assigned to it by section 35, p. 155, *ante*. See also subsections (5) and (6) of section 114, *supra*. Any person registered under this section becomes a registered pupil (see note (n), *infra*), but it should be noted that the duty to register does not arise in the case of a person attending school who is under or over compulsory school age, though no such qualification is contained in the definition of registered pupil in section 114 (1), p. 255, *post*.

As to proof of age for the purposes of the Act and in proceedings under the Act, see sections 94 and 95, pp. 229 and 230, *post*.

(k) "**Pupils**".—Section 114 (1), p. 255, *post*, provides that, subject to the qualification introduced by this section, "pupil" means a person of any age for whom education is required to be provided under the Act.

(l) "**Local education authorities**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post* As to the application of the Act to London and the Isles of Scilly, see section 117 and 118, pp 266 and 267, *post*.

(m) "**On summary conviction**".—The Summary Jurisdiction Acts are those of 1848, 1879, 1884, 1899; Halsbury's Statutes 270, 323, 355, 363, and the Summary Jurisdiction (Process) Act, 1881; *ibid.* 352. See section 11 of the Act of 1848 as to the limitation of time for summary proceedings; *ibid.* 278.

(n) "**Registered pupil**".—Section 114 (1), p. 255, *post*, defines this term in relation to any school as a pupil registered as such in the register kept by the managers, governors or proprietor of the school in accordance with this section, but does not include any child who has been withdrawn from the school in the prescribed manner.

(o) "**Child**".—Section 114 (1), p. 255, *post*, defines this word as a person who is not over compulsory school age.

(p) "**School attendance order**".—See section 37 (2), p. 158, *ante*. If a child who is a registered pupil at a school (whether a school attendance order is in force in respect of him or not) fails to attend regularly at the school the parent of the child is guilty of an offence under section 39, p. 161, *ante*. Provision is made by section 37 (4), p. 158, *ante*, enabling the parent of a child in respect of whom a school attendance order is in force to request that another school shall be substituted for that named in the order or that it be revoked, and, if aggrieved by the refusal of the local education authority to comply with the request, to refer the question to the Minister. By subsection (7), *ibid*, a school attendance order remains in force until revoked or until the child ceases to be of compulsory school age.

(q) "***May be withdrawn***".—A child who has become a registered pupil at a special school under arrangements made by a local education authority may not be withdrawn from the school without the authority's consent (section 38 (2), p. 160, *ante*), but provision is made to enable an aggrieved parent to refer the matter to the Minister.

81. Power of local education authorities to give assistance by means of scholarships and otherwise.—Regulations (a) shall be made by the Minister empowering local education authorities (b), for the purpose of enabling pupils (c) to take advantage without hardship to themselves or their parents (d) of any educational facilities available to them—

(*a*) to defray such expenses of children (e) attending county schools (f), voluntary schools (g), or special schools (h), as may be necessary to enable them to take part in any school activities (i) :

(*b*) to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable (k) :

(*c*) to grant scholarships, exhibitions, bursaries, and other allowances in respect of pupils over compulsory school age (l), including pupils undergoing training as teachers (m) :

(*d*) to grant allowances in respect of any child in respect of whom any scholarship exhibition bursary or other allowance has been granted by a former authority (n) before the date of the commencement of this Part of this Act. **[455]**

NOTES

This section enables a local education authority (*inter alia*) to grant scholarships and maintenance allowances to pupils over compulsory school age, and also empowers a local education authority to pay the fees of children attending fee-charging schools including boarding schools. A similar power is conferred on the Minister by section 100 (1) (c), p. 239, *post*. In connection with these matters the following extract from the White Paper on Educational Reconstruction (Cmd. 6458 of 1943, at pp. 25–26) is of importance :—

"The path of the poor scholar to the university has been made broader and less difficult during the past twenty years. That the expenditure by the Board through the system of state scholarship and by local education authorities through their major awards has been a profitable investment is shown by the successes achieved at universities by the beneficiaries. None the less, it has to be admitted that the provision of scholarships and bursaries is still inadequate in total and uneven in its incidence. The making of these major awards is a *power and not a duty of local education authorities, and there is a very wide disparity as* between one authority and another in the extent to which the power is exercised. The aim of a national policy must be to ensure that high ability is not handicapped by the accidents of place of residence or lack of means in securing a university education The problem how best to attain this end is an administrative one which does not call for legislative changes, and the Norwood Committee's advice on this question will be immediately available for the guidance of the Government.

It will also be possible, from another direction, to provide a university education under the Government Scheme of further education and training for large numbers of men and women whose further education has been prevented or interrupted by war service. The scheme is designed to secure to the country the service of those highly trained in the humane studies, and to ensure an adequate supply of men and women equipped to fill the higher posts in industry (including agriculture), commerce, and the professions. Awards to applicants for a full-time course of education at Universities and University Colleges in England and Wales will be administered by the Board in collaboration with the Ministry of Labour and National Service, agricultural awards being dealt with by the Ministry of Agriculture. The scheme may be expected to make large demands upon the administrative and teaching staffs of the Universities, whose goodwill and support are confidently looked for in the light of the invaluable help rendered by them under the somewhat similar scheme in operation after the war of 1914–18".

The Report of the Norwood Committee, to which reference is made in the above-mentioned quotation, is entitled "Curriculum and Examinations in Secondary Schools" and was issued by the Board of Education in 1941.

Paragraphs (b) and (c) of subsection (1) of this section are drawn from section 71 (c) of the Education Act, 1921, 7 Halsbury's Statutes 168.

(a) "**Regulations**".—As to the making of regulations under the Act, see section 112, p. 254, *post*.

(b) "**Local education authorities**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*

(c) "**Pupils**".—By section 114 (1), p. 255, *post*, this term where used without qualification means persons of any age for whom education is required to be provided under the Act.

(d) **"Parents".**—Section 114 (1), p 255, *post*, provides that in relation to any child or young person "parent" includes a guardian and every person who has the actual custody of the child or young person

(e) **"Children".**—By section 114 (1), p 255, *post*, "child" means a person who is not over compulsory school age

(f) **"County schools".**—See section 9 (2), p 100, *ante*

(g) **"Voluntary schools".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided or special agreement schools, see section 15, p 113, *ante*

(h) **"Special schools".**—See sections 9 (5) and 33, pp 100 and 151, *ante*

(i) **"Any school activities".**—This phrase will presumably cover any matter in relation to the activities of the school in connection with work or play, except matters in respect of which the local education authority already has power to pay the pupil's expenses, such as the cost of board and lodging otherwise than at school (sections 50-52, pp 184—186, *ante*), the cost of clothing (sections 51 and 52, pp 185 and 186, *ante*), the expenses of games, expeditions and other activities (section 53 (1), p 187, *ante*), and the cost of board and lodging at school or college (section 61 (2), p 196, *ante*)

(j) **"Schools at which fees are payable".**—See section 61, p 196, *ante*, and the notes to that section

(k) **"Compulsory school age".**—By section 114 (1), p 255, *post*, this term has, subject to the provisions of section 38, p 160, *ante*, the meaning assigned to it by section 35, p 155, *ante* See also subsections (5) and (6) to section 114, *ante*

(l) **"Pupils undergoing training as teachers".**—See section 62, p 198, *ante*, and the notes to that section It was stated on the Committee Stage of the *Bill* in the House of Commons by the Parliamentary Secretary to the Board of Education that the subsection is not intended to cover the case of fees that have to be paid by pupils when they are articled to certain professions or apprenticeship fees, but is intended to cover the payment of the cost of taking university courses, such as the I L B degree in the case of a person articled to a solicitor

(m) **"Former authority".**—Section 114 (1), p. 255, *post*, defines this term as any authority which was a local education authority within the meaning of any enactment repealed by the present or any previous Act This paragraph enables a local education authority to continue to pay any allowances granted by a local education authority before 1st April, 1945, whether by the same local education authority or by an authority whose educational functions have been transferred to the county council by the Act

(n) **"The commencement of Part II of this Act".**—Like this Part of the Act, Part II comes into operation on 1st April, 1945 (section 119, p 267, *post*)

82. Powers of local education authorities as to educational research, etc.— A local education authority (a) may, with the approval of the Minister make such provision for conducting or assisting (b) the conduct of research as appears to the authority to be desirable for the purpose of improving the educational facilities provided for their area (c) **[456]**

NOTES

This section replaces section 74 of the Education Act, 1921, 7 Halsbury's Statutes 170, which enabled local education authorities for higher education to aid teachers and students to carry on investigations for the advancement of learning or research in or in connection with an educational institution, with a view to promoting the efficiency of teaching and advanced study, and for that purpose to aid educational institutions

The section enlarges the powers conferred on local education authorities by the above-mentioned enactment to aid research which would improve the educational facilities of its area So far as the Minister is concerned, the general powers given by section 1 (1), p 83, *ante*, enable him to foster educational research, whilst section 100 (1) (*b*), p 239, *post* specifically empowers him to make grants for the purpose to persons other than local education authorities

(a) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **"Assisting".**—The definition of "assist" in section 114 (1), p 255, *post*, does not apply to the use of the word in this section

(c) **"The purpose of improving the educational facilities provided for their area"** —Section 84, p 221, *post* in addition enables local education authorities, for the purpose of improving the facilities for further education available for its area with the consent of the Minister to provide financial assistance to any university or university college

83. Powers of local education authorities as to educational conferences.— Subject to any regulations (a) made by the Minister a local education authority (b) may organise, or participate in the organisation of, conferences for the discussion of questions relating to education, and may expend such sums as may be reasonable in paying or contributing towards any expenditure incurred in connection with conferences for the discussion of such questions, including the expenses of any person authorised by them to attend any such conference **[457]**

NOTES

Section 267 of the Local Government Act, 1933, 26 Halsbury's Statutes 448, which also deals with conferences of local authorities, contains a saving to the effect that nothing in that section is to affect the provisions of any other enactment for the time being in force authorising the payment of expenses incurred by members or officers of a local authority in attending any

conference or meeting, or to authorise a local authority to defray any expenses to which that enactment applies except in accordance with the provisions of that enactment.

(a) **" Regulations ".**—As to the making of regulations, see section 112, p. 254, *post*.

(b) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

84. Power of local education authorities to make grants to universities and university colleges.—A local education authority (a) may with the consent of the Minister provide financial assistance (b) to any university or university college for the purpose of improving the facilities for further education (c) available for their area [458]

NOTES

This section is new law and gives facilities to local education authorities which are additional to those contained in section 82, p. 220, *ante*.

(a) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **" Financial assistance ".**—The definition of " assist " in section 114 (1), p. 255, *post*, does not apply to the use of the word in this section.

(c) **" The facilities for further education ".**—The term " further education " is defined in section 41, p. 164, *ante*. In preparing schemes of further education under section 42, p. 170, *ante*, a local education authority is, by subsection (4), *ibid.*, to have regard to any facilities for urther education provided for its area by universities, educational associations and other bodies, and is required to consult them. The scheme, as approved by the Minister, may include agreed provisions as to the co-operation of the authority and any such bodies.

85. Power of local education authorities to accept gifts for educational purposes.—(1) Subject to the provisions of this section, a local education authority (a) shall have power, and any such authority or any former authority (b) shall be deemed always to have had power, to accept hold and administer any property (c) upon trust for purposes connected with education (d). [459]

(2) A local education authority shall not, on or after the date of the commencement of Part II of this Act (e), be constituted trustees of any school (f) providing primary or secondary education (g) other than a nursery school (h) or a special school (i) except after the submission to the Minister of proposals for that purpose ; and where proposals are so submitted to the Minister they shall be treated for the purposes of this Act as proposals for the maintenance as a county school (k) of a school which at the time being is not such a school, and the provisions of this Act relating to such proposals shall have effect accordingly. [460]

(3) Any school for providing primary or secondary education which is vested in a local education authority as trustees thereof, not being a nursery school or special school, shall be a county school (l). [461]

NOTES

This section replaces section 164 of the Education Act, 1921 ; 7 Halsbury's Statutes 210, which, however, only applied to local education authorities for elementary education. The Local Government Act, 1933, section 268 ; 26 Halsbury's Statutes 449, also enables a local authority to accept gifts, but the section specifically provides that nothing therein is to effect any powers exercisable by a local authority under, or by virtue of " the Education Acts, *1921* to *1933* ". Although section 120, p. 268, *post*, which provides for the amendment and construction of various enactments, does not specifically substitute a reference to the present Act for the reference to the Acts of 1921 and 1933, such a substitution should be assumed.

(a) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule p. 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **" Former authority ".**—By section 114 (1), p. 255, *post*, this term means any authority which was a local education authority within the meaning of any enactment repealed by the present Act or any previous Act. It includes authorities which remain local education authorities under the Act as well as authorities whose functions are transferred to the county council.

(c) **" To accept hold and administer any property ".**—The powers of a local education authority under this section are much wider than they were under section 164 of the Act of 1921 ; 7 Halsbury's Statutes 210, which provided that nothing therein should authorise the authority to expend any money for any purpose other than elementary education. As to the exemption of assurances of land for the purposes of this section from the provisions of the Mortmain and Charitable Uses Acts, and as to the duty of the local education authority to send the assurance, or a copy thereof, to the Minister, see section 87, p. 223, *post*.

(d) **" Upon trust for purposes connected with education ".**—As to the application of an endowment of an existing school transferred under this section, see the remarks of the Master of the Rolls in *In re Poplar and Blackwall Free School (1878), 8 Ch. D. 545; 19 Digest 563, 5b.*

(e) **"The date of the commencement of Part II of this Act".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p. 267, *post*).

(f) **"School".**—See the definition of this word in section 114 (1), p. 255, *post*.

(g) ***"Primary or secondary education".***—By section 114 (1), p. 255, *post*, these terms are respectively given the meanings assigned to them by section 8, p. 97, *ante*; see paragraphs (*a*) and (*b*) of subsection (1) of that section.

(h) **"Nursery school".**—See section 9 (4), p. 100, *ante*.

(i) **"Special school".**—See sections 9 (5) and 33, pp. 100 and 151, *ante*.

(k) **"Proposals for the maintenance as a new county school".**—See section 13, p. 109, *ante*.

(l) ***"County school".***—See section 9 (2), p. 100, *ante*.

86. Extension of power to make schemes under the Endowed Schools Acts, and modifications of those Acts and of 4 & 5 Vict. c. 38.—(1) Where it appears to the Minister that the purposes for which any educational endowment is applicable include the provision of religious education (a) for the pupils (b) in attendance at a voluntary school (c) in accordance with the tenets of a particular religious denomination, and that it is desirable for the purpose of enabling that denomination to participate more effectively in the administration of the statutory system of public education (d) that a scheme should be made under the Endowed Schools Acts, 1869 to 1908 (e), in relation to that endowment, but that there is no power to make a scheme under those Acts in relation thereto, or that the power to make such a scheme is subject to such conditions that it cannot in practice be exercised, he may by order direct (f) that the provisions of those Acts shall have effect in relation to the endowment subject to such modifications, if any, as appear to him to be necessary for the purpose of securing that a scheme may be made in relation to the endowment thereunder. [462]

(2) Where it appears to the Minister to be desirable that a scheme made under the Endowed Schools Acts, 1869 to 1908, in relation to any educational endowment should make provision for the sale of any land forming part of the endowment and the application of the proceeds of sale in accordance with the provisions of the scheme, but that such provision cannot be made by reason of the third proviso to section two of the Schools Sites Act, 1841 (g) (which provides that if any land granted in accordance with the provisions of that section ceases to be used for the purposes mentioned in that Act, the land shall revert to the grantor), he may by order direct that the said proviso shall not have effect in relation to the land:

Provided that no such direction shall be given in relation to any land unless the Minister is satisfied, either—

(*a*) that the person to whom the land would revert in accordance with the said proviso cannot after due enquiry be found; or

(*b*) that, if that person can be found, he has consented to relinquish his rights in relation to the land under the said proviso, and that, if he has consented so to do in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum out of the proceeds of sale of the land. [463]

(3) A scheme made under the Endowed Schools Acts, 1869 to 1908, in relation to any educational endowment may, where the endowment includes land in respect of which an order has been made under the last foregoing subsection, make provision for the payment out of the proceeds of sale of the land of any sum which is payable to any person in consideration of the relinquishment of his rights in relation to the land under the said proviso. [464]

(4) Sections thirty-four, thirty-five and thirty-six of the Endowed Schools Act, 1869 (which relate to the period during which objections or suggestions may be made with respect to draft schemes published under that Act), and section thirty-nine of that Act and section thirteen of the Endowed Schools Act, 1873 (which relate to the period within which petitions may be presented to His Majesty in Council against schemes

approved under the said Act of 1869) shall have effect as if for the references therein to two months there were substituted references to one month, and the Endowed Schools Acts, 1869 to 1908, shall be construed accordingly [465]

(5) In this section, the expression "educational endowment" (h) has the meaning assigned to it by section five of the Endowed Schools Act, 1869 [466]

NOTES

The provisions of this section are designed to enable the religious denominations acting through such bodies as the Diocesan Education Committees established under the Diocesan Education Committees Measure, 1943, to participate more effectively in the administration of the statutory system of education Hitherto there have been two legal difficulties in the way of the reorganisation of Church of England elementary schools—

(1) Their trusts have normally been restricted to a single parish, and

(2) Many of their sites have been liable to revert to a private owner if the school ceases to be carried on

As a result of these two difficulties it has been impossible to sell the premises of many redundant and obselete schools and to apply the proceeds towards the building of new schools where they are most needed The section consequently overcomes the difficulties by permitting schemes to be made under the Endowed Schools Acts, but with a less cumbrous procedure, to enable any denomination to use its schools and educational endowments to the best advantage in the new statutory system Notice is to be given of any proposal affecting the rights of a reversioner under section 2 of the School Sites Act, 1841, 7 Halsbury's Statutes 274, and he will be entitled to claim compensation In practice it is only very rarely that any claims are made by reversioners but the possibility of such claims hampers the most effective use of the premises of many church schools

(a) **"The provision of religious education".**—The provisions of the Act dealing with religious education in county and auxiliary schools are contained in sections 25–30, pp 139 to 147, *ante*

(b) **"Pupils".**—By section 114 (1), p 255, *post*, "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act

(c) **"Voluntary school".**—See section 9 (2), p 100, *ante*, and, as to the classification of such schools as controlled, aided and special agreement schools, see section 15, p 113, *ante*

(d) **"The statutory system of public education".**—This is a generic phrase intended to cover all phases of primary and secondary education which are dealt with in Part II of the Act, see in particular section 7, p 93, *ante*

(e) **"The Endowed Schools Acts, 1869 to 1908".**—These Acts consist of the Endowed Schools Acts, 1869, 1873 and 1874, 7 Halsbury's Statutes 241, 258, 363, the Endowed Schools (Vested Interests) Act Continuance Act, 1875 *ibid* 265, the Welsh Intermediate Education Act, 1889, *ibid* 265, and the Endowed Schools (Masters) Act, 1908, *ibid* 272 Certain provisions of the Endowed Schools Acts, 1860 and 1868, are not yet entirely obsolete As to the making of schemes under those Acts see generally sections 9–51 of the Endowed Schools Act, 1869, *ibid* 244–256

(f) **"He may by order direct".**—As to the revocation or variation of orders and directions, see section 111, p 254, *post*

(g) **"The third proviso to section two of the School Sites Act, 1841".**—7 Halsbury's Statutes 274 The operative part of the section quoted enables persons seised of various interests in land to give, sell or exchange, in fee simple or for a term of years, any quantity of land not exceeding one acre in extent as a site for a school for the education of poor persons, or for a school house, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge The third proviso stipulates that upon the land ceasing to be used for the purposes mentioned in that Act it shall immediately revert to the estate of the grantor

(h) **"Educational endowment".**—Section 5 of the Endowed Schools Act, 1869, 7 Halsbury's Statutes 242, provides that in that Act, unless the context otherwise requires, this term means an endowment or any part of an endowment which, or the income whereof, has been made applicable or is applied for the purposes of education at school of boys and girls or either of them, and of exhibitions tenable at a school or a university or elsewhere, whether it has been made so applicable by the original instrument of foundation or by any subsequent Act of Parliament, letters patent, decree, scheme, order, instrument or other authority, and whether it has been made applicable or is applied in the shape of payment to the governing body of any school or any member thereof, or to any teacher or officer of any school, or to any person bound to teach, or to scholars in any school, or their parents, or of buildings, houses or school apparatus for any school, or otherwise howsoever For various decisions as to what may constitute an educational endowment for the purposes of the section, see *Hodgson's School* (1878), 3 App Cas 857, 19 Digest 590, *195*, *Ross* v *Charity Commissioners* (1882), L R 7 App Cas 463, 19 Digest 592 *216*, *Re Holgate's (Archbishop) Free Grammar School at Hemsworth* (1887), L R 12 App Cas 444, 19 Digest 588, 191, *Re Christ's Hospital* (1889), 15 App Cas 172, 19 Digest 590, *204*, *Re Meyricke Fund* (1872), L R 7 Ch App 500, 19 Digest 588, *188*, and *A G* v *Christ Church, Oxford (Dean and Chapter)* [1894] 3 Ch 524, 19 Digest 588, *190*

87. Exemption of assurances of property for educational purposes from the Mortmain Acts.— (1) The Mortmain and Charitable Uses Act, 1888, the Mortmain and Charitable Uses Act, 1891 and the Mortmain and Charitable Uses Act Amendment Act 1892 (a) (which impose restrictions upon assurances of land and personal estate to corporations and to charitable uses) shall not have effect with respect to any assurance (b) of land or of personal estate to be laid out in the purchase of land if the land or the income thereof (c) is to be used for educational purposes (d) [467]

(2) Every assurance of land or of personal estate to be laid out in the purchase of land, including every assurance of land to any local education authority (e), shall, if the land or the income thereof is to be used for educational purposes, be void (f) unless the assurance or a copy thereof is sent to the Minister within six months after the date upon which the assurance takes effect:

Provided that the Minister may, either before or after the expiration thereof, extend the said period of six months in any particular case, and if the assurance or a copy thereof is sent to the Minister within the extended period the assurance shall not be void or shall be deemed not to have been voided, as the case may be. [468]

(3) The Minister shall cause to be kept a record of every assurance which, or a copy of which, is sent to him in compliance with the provisions of this section. [469]

(4) In this section, the expression "assurance" (g) has the meaning assigned to it by section ten of the Mortmain and Charitable Uses Act, 1888. [470]

(5) Nothing in subsection (2) of this section shall affect the validity of any assurance which has taken effect before the date of the commencement of Part II of this Act (h). [471]

NOTES

This section replaces section 117 of the Education Act, 1921, 7 Halsbury's Statutes 193. The Mortmain and Charitable Uses Act, 1888; 2 Halsbury's Statutes 385, consolidated the previously existing law and repealed, in whole or in part, sixteen earlier statutes, commencing with *De Viris Religiosis* (7 Edw. 1), and has been only slightly amended by the subsequent Acts of 1891 and 1892, 2 Halsbury's Statutes 396, 398. The general effect of these Acts was to restrain the tenure of land by corporations which never die and by trustees for charitable purposes. Very many subsequent statutes affecting local government have exempted local authorities from the operation of these Acts and the present section similarly grants a complete exemption, provided the local education authority complies with the provisions of subsection (2) thereof.

(a) **"The Mortmain and Charitable Uses Act, 1888, the Mortmain and Charitable Uses Act, 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892".**—2 Halsbury's Statutes 385, 396, 398. By section 114 (8), p. 258, *post*, references in this Act unless the context otherwise requires, to any enactment or any provision of any enactment are to be construed as references to that enactment or provision as amended by any subsequent enactment, including this Act.

(b) **"Assurance".**—See subsection (4) of this section.

(c) **"Or the *income thereof*".**—These words clear up a doubt as to the effect of section 117 of the Act of 1921, 7 Halsbury's Statutes 193, which exempted from the scope of the Mortmain and Charitable Uses Acts "any assurance . . of land or personal estate to be laid out in the purchase of land for educational purposes". It seemed from an *obiter dictum* of Astbury, J. in *Re Harrow School Governors and Murray's Contract* [1927] 1 Ch. 556, Digest Supp. that that section did not apply where the assurance of land was for the purposes of an endowment and was not itself to be used for educational purposes.

(d) **"Educational purposes".**—There is no definition of this term in the Act and presumably the exemption will apply if the land or personal estate is to be used for any of the purposes of this Act or of any other unrepealed enactment relating to education. The section does not only apply to land assured to local education authorities but to all schools whether they are within or outside the statutory system of public education (*Re Harrow School Governors and Murray's Contract* [1927] 1 Ch. 556, Digest Supp.)

(e) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(f) **"Void".**—Section 117 of the Act of 1921, 7 Halsbury's Statutes 193, prescribed no penalty for failure to comply with the duty to send the assurance to the Board to be recorded. If an assurance becomes void as a result of failure to comply with the duty imposed by this subsection the effect is that the land or personal estate will be deemed still to be vested in the grantor and it is at least unusual to provide, as does the proviso to the subsection, that at a subsequent date the Minister may be extending the period specified in the section render the assurance valid.

(g) **"Assurance".**—By section 10 of the Mortmain and Charitable Uses Act, 1888; 2 Halsbury's Statutes 391, this expression includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument.

(h) **"Has taken effect before the *date of the commencement of Part II of this Act*".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p. 267, *post*). Thus the effect of this subsection is twofold—

(*a*) it does not render invalid any assurance which takes effect before 1st April, 1945, and which has not been sent to the Board before that date, and

(*b*) it does not require any assurance taking effect between 1st October, 1944, and 31st March, 1945, or a copy thereof to be sent to the Minister on or after 1st April, 1945, on penalty of avoidance in the event of failure so to do.

ADMINISTRATIVE PROVISIONS

88. Appointment of chief education officers of local education authorities.—The duties of a local education authority (a) with respect to the appointment of officers under the provisions of the Local Government Act, 1933 (b) shall without prejudice to the generality of those provisions include the duty of appointing (c) a fit person to be the chief education officer of the authority but a local education authority shall not make such an appointment except after consultation with the Minister, and for the purposes of such consultation an authority proposing to make such an appointment shall send to the Minister particulars showing the name previous experience and qualifications of the persons from whom they propose to make a selection If the Minister is of opinion that any person whose name is so submitted to him is not a fit person to be chief education officer of the authority he may give directions (d) prohibiting his appointment [472]

NOTES

This section, which requires each local education authority to appoint a fit person as chief education officer, and enables the Minister to veto an appointment which he deems to be unsuitable, is entirely new so far as the appointment of a chief education officer is concerned, though somewhat similar powers of control are vested in other Ministers in relation to the appointments of such officers as the medical officer of health of a local authority, the highway authority's engineer, and the chief constable of a police authority The object of the section is to enable the Minister to ensure that persons of real educational knowledge and experience are appointed as chief education officers and that the following remarks of the Parliamentary Secretary to the Board of Education (on the Committee stage of the Bill in the House of Commons) may no longer be justified —

> I can think of a good many cases where a person who has been an ordinary clerk in the town clerk's office has been appointed chief education officer of the borough, without any experience that enables him to give the local education committee sound advice on the matters that come before them "

The section and the abolition of Part III authorities under the Act will put an end to part time education officers which, in light of the complex administrative problems of the education service, cannot but be of benefit to the service in the areas concerned

(a) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly see sections 117 and 118, pp 266 and 267, *post*

(b) **" The appointment of officers under the provisions of the Local Government Act, 1933 ".**—Part IV of the Local Government Act, 1933 (sections 98–124, 26 Halsbury's Statutes 358 372, inclusive), relates to officers of local authorities, but by section 118, *ibid*, 26 Halsbury's Statutes 369, nothing in sections 98–117, 26 Halsbury's Statutes 358, inclusive was (*before 1st April, 1945*) to affect the appointment or tenure of office of officers appointed (*inter alia*) under the Education Act, 1921 However, from 1st April, 1945, section 120 and the Eighth Schedule, pp 268 and 291, *post*, and section 121 and the Ninth Schedule, pp 270 and 294, *post*, provide that the reference in section 118 of the Act of 1933, 26 Halsbury's Statutes 369, to the Education Act, 1921, is to be omitted, and the whole of Part IV of the Local Government Act, 1933, so far as relevant, will apply to officers of local education authorities, including the chief education officer to be appointed under this section

(c) **" The duty of appointing ".**—The Minister may enforce compliance with the requirements of this section by virtue of section 99, p 237, *post*

(d) **" He may give directions ".**—As to the revocation or variation of any such directions, see section 111, p 254, *post*

89. Remuneration to teachers.—(1) The Minister shall secure that for the purpose of considering the remuneration of teachers there shall be one or more committees approved by him consisting of persons appointed by bodies representing local education authorities (a) and teachers respectively, and it shall be the duty (b) of any such committee to submit to the Minister, whenever they think fit or whenever they may be required by him so to do, such scales of remuneration for teachers as they consider suitable, and whenever a scale of remuneration so submitted is approved by the Minister, he may by order (c) make such provision as appears to him to be desirable for the purpose of securing (d) that the remuneration paid by local education authorities to teachers is in accordance therewith. [473]

(2) The Minister shall nominate the person who is to be the chairman of any committee approved by him for the purposes of this section. [474]

NOTES

The clause in the Bill which was the source of this section was productive of the only major crisis occurring during the passage of the Bill when, on the Committee stage in the House of Commons, the Government was defeated by one vote on an amendment providing for equal pay for equal work irrespective of sex The matter subsequently became, however, a question of confidence in the Government and the amended clause was deleted from the Bill and subsequently

reinserted in its original form. Later, during the passage of the Bill through the House of Lords, the clause was largely redrawn. It has, however, had this consequence, that a Royal Commission has been appointed to consider and report upon the question of equal pay for equal work.

The section empowers the Minister to appoint one or more committees to consider and make recommendations to him regarding the remuneration of teachers, and by order to require the adoption by local education authorities of any scales approved by him. The Burnham Committee was first set up in 1919 under the chairmanship of Lord Burnham " to secure the orderly and progressive solution of the salary problem in public elementary schools by agreement on a national basis and its correlation with a solution of the salary problem in secondary schools ". The committee's work has been extremely valuable and its recommendations are in general accepted by all local education authorities. Hitherto, however, the only way in which the Board of Education could enforce the payment by local education authorities of salaries in accordance with the Burnham Committee's recommendations has been to withhold payment of grant to a recalcitrant authority.

(a) **" Local education authorities "**.—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **" It shall be the duty "**.—This is not a duty which the Minister may enforce under section 99, p. 237, *post*, and in the event of a committee failing to submit scales which he could approve, his only remedy would be to appoint a new committee.

(c) **" He may by order "**.—As to the revocation or variation of such an order, see section 111, p. 254, *post*.

(d) **" For the purpose of securing "**.—So far as any such order imposes duties upon local education authorities in relation to the payment of salaries, they will be enforceable under section 99, p. 237, *post*, as being imposed " for the purposes of this Act ".

90. Compulsory purchase of land and other dealings in land by local education authorities.—(1) A local education authority (a) may be authorised, by means of an order (b) made by the authority and confirmed by the Minister, to purchase compulsorily any land, whether situate within or without the area of the authority, which is required for the purposes of any school (c) or college (d) which is, or is to be, maintained by them (e), or otherwise for the purposes of their functions under this Act; and with respect to the compulsory purchase of land by local education authorities for any such purpose, the provisions of the Local Government Act, 1933 (f), relating to the compulsory purchase of land by means of compulsory purchase orders shall have effect as if for the references therein to the Minister of Health there were substituted references to the Minister.

Provided that the Minister shall not confirm a compulsory purchase order for the purchase of any land required for the purposes of a voluntary school (g) unless he is satisfied that the arrangements made as to the vesting of the land to be purchased, and as to the appropriation thereof for those purposes, are such as to secure that the expenditure ultimately borne by the local education authority will not include any expenditure which, if the land had been purchased by the managers or governors (h) of the school, would have fallen to be borne by the managers or governors (i). **[475]**

(2) Section one hundred and sixty three of the Local Government Act, 1933 (k) (which relates to the appropriation for purposes approved by the Minister of Health, of land belonging to local authorities and not required for the purposes for which it was acquired or has since been appropriated) shall, in relation to any land for the time being vested in a local education authority for the purposes of any of their functions under this Act, and not required for the purposes of that function, have effect as if for the references therein to the Minister of Health there were substituted references to the Minister. **[476]**

(3) Sections one hundred and sixty-four and one hundred and sixty-five of the Local Government Act, 1933 (l) (which relate to the sale letting and exchange of land vested in local authorities) shall, in relation to any land vested in a local education authority for the purposes of their functions under this Act, have effect as if for the references in those sections to the Minister of Health there were substituted references to the Minister. **[477]**

NOTES

In order to see clearly the changes made by this Act in relation to the acquisition of, and dealings in, land for educational purposes it is essential to consider, together with this section, the effect of what appears at first sight to be a very small amendment made by this Act in the Local Government Act, 1933, which, however, substitutes an entirely different series of provisions for those relating to the acquisition of land, etc., formerly contained in the Education Acts.

The previous law relating to the acquisition, appropriation and alienation of land was

contained in Part IX (sections 109–117 inclusive, 7 Halsbury's Statutes 190–193) of the Education Act, 1921, and in the School Sites Acts, 1841, 1844, 1849, 1851 and 1852, 7 Halsbury's Statutes 274, 282, 284, 286, 287 (which, by the Short Titles Act, 1896, 7 Halsbury's Statutes 1021 are known by the collective title of the School Sites Acts) the School Grants Act, 1855, 7 Halsbury's Statutes 288, and certain other minor provisions The above mentioned provisions of the Education Act 1921, dealt with the following matters —

(1) **Section 109**; 7 Halsbury's Statutes 190, gave a general authority to acquire land for the purposes of that Act,

(2) **Section 110**; 7 Halsbury's Statutes 190, incorporated the Lands Clauses Acts for the purpose of the purchase of land by agreement,

(3) **Section 111**; 7 Halsbury's Statutes 190, provided for the compulsory purchase of land by means of an order confirmed by the Board of Education under the Fifth Schedule,

(4) **Section 112**; 7 Halsbury's Statutes 190, applied the School Sites Acts for the purposes of the purchase of land by a local education authority as if the authority were trustees or managers of a school within the meaning of those Acts, and authorised the acquisition of land either under that Act or the School Sites Acts,

(5) **Section 113**; 7 Halsbury's Statutes 190, authorised the appropriation of land for education purposes,

(6) **Section 114**; 7 Halsbury's Statutes 191, authorised the appropriation to other purposes of land acquired for educational purposes,

(7) **Section 115**; 7 Halsbury's Statutes 192, enabled an authority to alienate land acquired or held for educational purposes,

(8) **Section 116**; 7 Halsbury's Statutes 192, authorised the purchase of land by the managers of a non provided school and by persons proposing to establish such a school, under either the Lands Clauses Acts or the School Sites Acts, and

(9) **Section 117**; 7 Halsbury's Statutes 193, provided for the exemption of assurances of property for educational purposes from the restrictions imposed by the Mortmain Acts

Section 117, *ante*, has now been replaced by section 87, p 223, *ante*, but, apart from the provisions of this section, no specific powers to acquire or otherwise to deal in land for educational purposes are given by the present Act

The provisions of Part VII (sections 156–179 inclusive, 26 Halsbury's Statutes 301–404) of the Local Government Act, 1933, apply to the acquisition of, and all forms of dealings in, land by local authorities generally Hitherto, however, that Act has not applied to local education authorities as such, because section 179, *ante*, provides (*inter alia*) that nothing in that Part of the Act is to affect any provisions relating to the acquisition, appropriation or disposal of land by a local authority contained in any of the enactments set out in the Seventh Schedule thereto, 26 Halsbury's Statutes 509, and amongst a fairly lengthy list of statutes in that Schedule appeared the words 'the Education Acts, 1921 1933"

Section 121, and the Ninth Schedule, pp 270 and 294, *post*, now repeal, from 1st April, 1945, the whole of the Education Act, 1921, including, of course, the provisions relating to land The same section and Schedule also repeal, in the Seventh Schedule to the Local Government Act, 1933, 26 Halsbury's Statutes 509, the above mentioned words 'the Education Acts, 1921–1933" and this is made doubly certain by including in section 120 and the Eighth Schedule, pp 268 and 291, the following words

"Seventh Schedule The words "the Education Acts, 1921 to 1933" shall be omitted"

The effect of these provisions is, therefore, that in future all acquisitions of, and dealings in, land for the purposes of the present Act will take place, subject to the provisions of this section, under Part VII of the Local Government Act, 1933, 26 Halsbury's Statutes 391

Moreover, an incidental effect of bringing dealings in land for educational purposes into line with the provisions relating to local authorities generally will be that in future local education authorities will not be able to acquire or deal in land under the School Sites Acts, through these Acts will continue to regulate the transactions of managers and governors of voluntary schools and of trustees subject to the powers of compulsory acquisition of land for the purposes of voluntary schools under this section—as to which see note (e), *post*

(a) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post* See also notes (f), (k) and (l), *post*

(b) **"Order"**.—The order here referred to is a compulsory purchase order under section 161 of the Local Government Act, 1933, 26 Halsbury's Statutes 394, and not an order to which section 111, p 254, *post*, applies

(c) **"School"**.—This term is defined in section 114 (1), p 255, *post*, but the definition as there given is qualified by the following words of this subsection

(d) **"College"**.—This term covers not only county colleges as defined in section 43, p 171, *ante*, but any other type of college which may be established or maintained by the local education authority under the Act, *e g*, any college provided under section 42, p 170 *ante*, as part of a scheme of further education, or a teachers' training college established or maintained by an authority under section 62, p 198, *ante* The exact limitations of the word are not, however, important, in view of the later words of the subsection "or otherwise for the purposes of their functions under this Act"

(e) **"Which is, or is to be maintained by them"**.—It will be noted that these words extend the former powers of local education authorities in relation to the compulsory purchase of land under section 111 of the Education Act, 1921, 7 Halsbury's Statutes 190 which were limited to land required for the purposes of any of the authority's own powers or duties under that Act, and enable the authority to acquire land compulsorily for the purpose of any school or college which is, or is to be, maintained by the authority In light of the definition of the term "maintain" in section 114 (1) and (2), p 255 *post*, this power extends to the compulsory acquisition of land by the local education authority for the purposes of enlarging or providing playing fields for existing voluntary schools and even for proposed new voluntary schools This power should be of great assistance to the managers and governors of voluntary schools who might otherwise be precluded from acquiring sufficient additional land to bring their schools up to the standards to be prescribed by the Minister under section 10, p 103, *ante*, or from transferring a school to a new site under section 16, p 119, *ante*

The proviso to this subsection deals with the vesting of the land and the incidence of the cost.

(f) "**The provisions of the Local Government Act, 1933**".—See sections 161 and 162 of the Local Government Act, 1933; 26 Halsbury's Statutes 395, 396, which indicate the contents of a compulsory purchase order, regulate the procedure to be followed in making the order and submitting it for confirmation, and enable its validity to be questioned within a limited period after it is made.

As regards London, section 117 (4), p. 266, *post*, provides (*inter alia*) that the references in this section to the Local Government Act, 1933, shall be construed as references to the London Government Act, 1939; 32 Halsbury's Statutes 310.

(g) "**Voluntary school**".—See sections 9 (2), and 15, pp. 100 and 113, *ante*.

(h) "**Managers or governors**".—See note (d) to section 17, p. 122, *ante*

(i) "**Would have fallen to be borne by the managers or governors**".—It would appear from this proviso that the local education authority may, if it thinks fit, bear the costs involved in obtaining the compulsory purchase order, since compulsory powers of acquisition are not available to managers or governors, and, if the land had been purchased by them, no such costs could have arisen.

(k) "**Section one hundred and sixty-three of the Local Government Act, 1933**".—This section; 26 Halsbury's Statutes 396, provides that any land belonging to a local authority and not required for the purposes for which it was acquired or has since been appropriated may be appropriated for any other purpose approved by the Minister for which the local authority is authorised to acquire land. The section specifies the conditions attaching to an appropriation of land under the section, and provides for any necessary adjustment of the accounts of the authority.

As regards London, section 117 (4), p. 266, *post*, provides (*inter alia*) that this reference shall be construed as a reference to section 106 of the London Government Act, 1939; 32 Halsbury's Statutes 310.

(l) "**Sections one hundred and sixty-four and one hundred and sixty-five of the Local Government Act, 1933**".—These sections; 26 Halsbury's Statutes 397, respectively authorise a local authority—

(1) to let land for a term not exceeding seven years without the consent, and for any term with the consent, of the Minister; and

(2) with the consent of the Minister, to sell land no longer required, or to exchange land for other land, with or without paying or receiving money for equality of exchange.

As regards London, section 117 (4), p. 266, *post*, provides (*inter alia*) that these references shall be respectively construed as references to sections 107 and 108 of the London Government Act, 1939; 32 Halsbury's Statutes 311.

91. Accounts of councils of county boroughs and audit thereof.—The council of every county borough (a) shall keep separate accounts (b) of the sums received and expended by them in the exercise of any functions of the council under this Act, and those accounts shall be made up and audited in like manner as the accounts of a county council (c), and the enactments relating to the audit of accounts by a district auditor, and to the matters incidental to such audit and consequential thereon, shall have effect in relation to the accounts which the council of a county borough are required to keep under this section as they have effect in relation to the accounts of a county council. [478]

NOTES

This section re-enacts in more modern terms section 123 (2) of the Education Act, 1921; 7 Halsbury's Statutes 196. That section also applied to boroughs other than county boroughs but since the functions of the councils of non-county boroughs in relation to education are transferred by this Act to the county councils of whose areas the non-county boroughs form part the present section is limited to county boroughs. The necessity for this section arises from the fact that although by section 219 of the Local Government Act, 1933; 26 Halsbury's Statutes 424, all the accounts of a county council are automatically subject to district audit, by sections 237–240, *ibid.*; 26 Halsbury's Statutes 433–436, the accounts of a borough council are not so subject in the absence of specific statutory provision to that effect, or unless the council so determines.

As to the application of this Act to London generally, see section 117, p. 266, *post*. By section 243 of the Local Government Act, 1933; 26 Halsbury's Statutes 437, Part X of that Act; 26 Halsbury's Statutes 424–437 (including section 219, *ante*), applies to London. As regards the Isles of Scilly, section 118, p. 267, *post*, requires the Minister by order to provide for the application of the Act to the islands as if they were a separate county so that here also no question can arise.

(a) "**County borough**".—The councils of county boroughs are by section 6, p. 87, *ante*, local education authorities under the Act, subject to the provisions of the First Schedule, p. 271, *post*.

(b) "**Separate accounts**".—The necessity of keeping separate education accounts arises because the majority of the other accounts of a county borough council are not necessarily subject to district audit.

(c) "**In like manner as the accounts of a county council**".—See Part X (sections 219 243 inclusive; 26 Halsbury's Statutes 424–437), of the Local Government Act, 1933.

92. Reports and returns.—Every local education authority (a) shall make to the Minister such reports and returns and give to him such information as he may require (b) for the purpose of the exercise of his functions under this Act. [479]

NOTES

This section re-enacts in effect section 152 (1) of the Education Act, 1921, subsection (2) of that section being no longer necessary by reason of the transfer to county councils of the functions of the councils therein referred to.

(a) **"Local education authority"**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(b) **"As he may require".**—In view of the general duty imposed upon the Minister by section 1, p 83, *ante*, and of his power under section 99, p 237, *post*, to enforce the general duties of local education authorities under sections 7 and 41, pp 93 and 164, *ante*, in addition to the various functions specifically conferred upon the Minister throughout the Act, this section is sufficiently wide to enable the Minister to call upon a local education authority to provide him with any information which he may wish to have relating to the exercise by a local education authority of any of its functions under the Act

93. Power of Minister to direct local inquiries.—The Minister may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this Act (a), and the provisions of subsections (2) (3) (4) and (5) of section two hundred and ninety of the Local Government Act, 1933 (b), shall have effect with respect to any such inquiry as if the Minister were a department for the purposes of that section [480]

NOTES

This section replaces section 156 of the Education Act 1921, 7 Halsbury's Statutes 207, but does not re-enact paragraphs (a) to (e) inclusive of subsection (2) thereof, which dealt in general with domestic matters in connection with the holding of the inquiry, now normally found unnecessary in modern legislation The power possessed by a local education authority under section 41 (2), *ibid*, to demand a "public" inquiry into matters relating to the endowments of non-provided schools is not re-enacted

As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post* Section 117, *supra*, makes no specific reference to section 290 of the Local Government Act, 1933, 26 Halsbury's Statutes 459, mentioned in this section though, by section 308 (2) thereof, 26 Halsbury's Statutes 470, that Act does not apply to London except where expressly provided Furthermore, section 189 of the London Government Act, 1939, 32 Halsbury's Statutes 344, provides a similar code relating to local inquiries to that contained in section 290 of the Local Government Act, 1933, 26 Halsbury's Statutes 459, but it has apparently been thought satisfactory to apply the Local Government Act provisions to local inquiries in London under this Act, presumably for the sake of having one enactment applicable throughout the country

(a) **"For the purpose of the exercise of any of his functions under this Act".**—Since, apart from functions specifically given to the Minister under the Act, section 1 (1), p 83, *ante*, imposes on the Minister a general duty to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area, the functions of the Minister cover the entire scope of the Act and he is therefore entitled to hold a local inquiry in connection with any matter arising under the Act

(b) **"Subsections (2), (3), (4) and (5) of section two hundred and ninety of the Local Government Act, 1933".**—These provisions are as follows —

"(2) For the purpose of any such inquiry, the person appointed to hold the inquiry may by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined

Provided that—

(a) no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him, and (b) nothing in this section shall empower the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority

(3) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he may be required to produce for the purposes of this section, shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment

(4) Where a department cause any such inquiry to be held, the costs incurred by them in relation to that inquiry (including such reasonable sum not exceeding five guineas a day as they may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as the department may direct, and the department may certify the amount of the costs so incurred and any amount so certified and directed by the department to be paid by any authority or person shall be recoverable from that authority or person either as a debt to the Crown or by the department summarily as a civil debt

(5) The department may make orders as to the costs of the parties at any such inquiry and as to the parties by whom such costs shall be paid, and every such order may be made a rule of the High Court on the application of any party named in the order"

94. Certificates of birth and registrars' returns.—(1) Where the age of any person is required to be proved for the purposes of this Act (a) or of any enactment relating to the employment of children or young persons (b), the registrar (c) having the custody of the register of births and

deaths (d) containing the entry relating to the birth of that person shall, upon being presented by any person with a written requisition in such form and containing such particulars as may be determined by regulations made by the Minister of Health (e) and upon payment of a fee of sixpence, supply that person with a copy of the entry certified under his hand.

Every registrar shall, upon being requested so to do, supply free of charge a form of requisition for the purposes of this subsection. [481]

(2) Every registrar shall supply to a local education authority (f) such particulars of the entries contained in any register of births and deaths in his custody, and in such form, as, subject to any regulations made by the Minister of Health, the authority may from time to time require; and in respect of every entry in respect of which particulars are furnished by a registrar to a local education authority in compliance with any such requirement, the authority shall pay (g) to the registrar such fee not exceeding twopence as may be agreed between the authority and the registrar, or, in default of such agreement as may be determined by the Minister of Health. [482]

(3) In this section, the expression "register of births and deaths" means a register of births and deaths kept in pursuance of the Births and Deaths Registration Acts, 1836 to 1929, and the expression "registrar" includes a registrar of births and deaths and a superintendent registrar. [483]

NOTES

This section replaces and substantially re-enacts sections 135 and 136 of the Education Act, 1921; 7 Halsbury's Statutes 201, 202.

(a) **"Is required to be proved for the purposes of this Act".**—Proof of age may, for example, be required for the purposes of sections 34–39 inclusive, pp. 154 to 161, *ante*, 44, p. 172, *ante*, 57–59, pp. 192 to 194, *ante*, and 80, p. 218, *ante*.

(b) **"Any enactment relating to the employment of children or young persons".**—See, for example, the Children and Young Persons Acts, 1933 and 1938; 26 Halsbury's Statutes 168; 31 *ibid.* 365, and the Young Persons (Employment) Act, 1938; 31 Halsbury's Statutes 378. The terms "child" and "young person" are respectively defined in section 114 (1), p. 255, *post*, as—

(1) a person who is not over compulsory school age; and

(2) a person over compulsory school age who has not attained the age of eighteen years.

"Compulsory school age" is also defined by section 114 (1), *supra*, as having, subject to the provisions of section 38, p. 160, *ante*, the meaning assigned to it by section 35, p. 155, *ante*, and section 114 (5), p. 258, *post*, specifies the time at which a person shall be deemed to have attained any particular age.

(c) **"Registrar".**—By subsection (3) of this section this term includes a registrar of births and deaths and a superintendent registrar.

(d) **"Register of births and deaths".**—By subsection (3) of this section this term means a register of births and deaths kept in pursuance of the Births and Deaths Registration Acts, 1926 to 1929; 15 Halsbury's Statutes 706, 712, 736, 737, 768; 10 *ibid.* 898.

(e) **"Regulations made by the Minister of Health".**—As to the making of regulations by the Minister of Health, see section 112, p. 254, *post*. By proviso (a) to section 121, p. 270, *post*, any regulations in force under any enactment repealed by this Act is to continue in operation and have effect as if made under this Act and may be varied or revoked accordingly. For the time being, therefore, see the Certificates of Births, Deaths and Marriages (Requisition) Regulations, 1935 (S. R. & O. 1935 No. 890).

(f) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(g) **"The authority shall pay".**—As to the enforcement of this duty, see section 99, p. 237, *post*.

95. Provisions as to evidence.—(1) Where in any proceedings under this Act (a) the person by whom the proceedings are brought alleges that any person whose age is material to the proceedings is under, of, or over, any age (b), and satisfies the court that having used all reasonable diligence to obtain evidence as to the age of that person (c) he has been unable to do so, then, unless the contrary is proved (d), the court may presume that person to be under, of, or over, the age alleged. [484]

(2) In any legal proceedings any document purporting to be—

(*a*) a document issued by a local education authority (e), and to be signed by the clerk of that authority or by the chief education officer (f) of that authority or by any other officer of the authority authorised to sign it;

(*b*) an extract from the minutes of the proceedings (g) of the managers

or governors (h) of any county school (i) or voluntary school (k), and to be signed by the chairman of the managers or governors or by their clerk;

(*c*) a certificate giving particulars of the attendance of a child (l) or young person (m) at a school (n) or at a county college (o), and to be signed by the head teacher of the school or college; or

(*d*) a certificate issued by a medical officer (p) of a local education authority and to be signed by such an officer;

shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be, and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature, or official capacity, and any such extract or certificate as is mentioned in paragraph (*b*) (*c*) or (*d*) of this sub-section shall be evidence of the matters therein stated. [485]

NOTES

This section replaces section 55 (4); 9 Halsbury's Statutes 162 (as to certificates signed by a duly qualified medical practitioner), 141; *ibid.* 203 (as to proof of age), 142, *ibid.* (as to proof of attendance at school), 143; *ibid.* (as to certificates of teachers regarding attendance), 159; *ibid.* 209 (as to evidence of certificates, etc., issued by local education authorities) of and paragraph (8) of the Third Schedule; *ibid.* 220 (as to minutes of managers) to the Education Act, 1921.

(a) "**In any proceedings under this Act**".—See sections 34, 40, 46, 57, 59 and 80, pp. 154, 163, 177, 192, 194, and 218, *ante*.

(b) "**Is under, of, or over, any age**".—As to the time at which, for the purposes of the Act, a person in attendance at a school or county college attains any particular age, see section 114 (5), p. 258, *post*.

(c) "**Evidence as to the age of that person**".—See, for example, section 94, p. 229, *ante*.

(d) "**Unless the contrary is proved**".—Under section 141 of the Education Act, 1921; 7 Halsbury's Statutes 203, the onus of proof that a child or young person was not of the age alleged was placed upon the defendant wherever the child or young person was apparently of the age alleged. Now, before that onus is placed upon the defendant, it will be necessary for the person by whom the proceedings are brought first to show that he has used all reasonable diligence to obtain evidence as to the age of the person concerned and has been unable to do so.

(e) "**Local education authority**".—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(f) "**Chief education officer**".—As to the appointment of a chief education officer of a local education authority, see section 88, p. 225, *ante*.

(g) "**Minutes of the proceedings**".—As to the proceedings of managers and governors of county and voluntary schools, see section 22, p. 133, *ante*.

(h) "**Managers or governors**".—See note (d) to section 17, p. 122, *ante*.

(i) "**County school**".—See section 9 (2), p. 100, *ante*.

(k) "**Voluntary school**".—See section 9 (2), p. 100, *ante*, and, as to the classification of voluntary schools as *controlled, aided and special agreement schools*, section 15, p. 113, *ante*.

(l) "**Child**".—By section 114 (1), p. 255, *post*, this means a person who is not over compulsory school age.

(m) "**Young person**".—By section 114 (1), p. 255, *post*, this means a person over compulsory school age who has not attained the age of eighteen years.

(n) "**School**".—Section 114 (1), p. 255, *post*, defines this term as an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school.

(o) "**County college**".—This term is defined in section 43, p. 171, *ante*.

(p) "**Medical officer**".—By section 114 (1), p. 255, *post*, this expression, in relation to a local education authority, means a duly qualified medical practitioner employed, or engaged, whether regularly or for the purposes of any particular case, by that authority.

96. Provisions consequential on cessation of functions of former authorities.—(1) If upon the application of a former authority (a) the Minister is satisfied with respect to any property (b) which was immediately before the date of the commencement of Part II of this Act (c) held by that authority for the purposes of functions exercisable by them under the Education Acts, 1921 to 1939 (d), that, although the property was so held, it was held upon trust for purposes of such a nature that the transfer thereof to a local education authority (e) would be inexpedient, the Minister may by order direct (f) that the property shall be deemed not to have been transferred by virtue of section six of this Act (g) to the local education authority for the county (h) in which the area of the former authority is situated. [486]

(2) Where any question arises (i) as to whether any officers, property, rights, or liabilities (k), have been transferred by virtue of this Act from a

former authority to a local education authority, that question shall be determined by the Minister [487]

(3) Where any officers, property, rights or liabilities, have been transferred by virtue of this Act from a former authority to a local education authority, the local education authority and the former authority may by agreement provide for the making of such adjustments (1) in relation to their respective property rights, and liabilities, as appear to the authorities to be desirable having regard to the transfer, and any such agreement may, in particular provide for the making of payments by either party thereto [488]

(4) Where it appears to the Minister that having regard to any such transfer it is desirable that any such adjustment as aforesaid (including any payment by either of the authorities concerned) should be made, he may, subject to any agreement made under the last foregoing subsection by directions (m) make provision for that adjustment [489]

(5) Where at the commencement of Part II of this Act any former authority were parties to any proceedings pending with respect to any property, rights, or liabilities, which by virtue of this Act are transferred from the former authority to a local education authority, the proceedings may be carried on thereafter with the substitution of the local education authority for the former authority as parties thereto [490]

NOTES

Under section 6, p 87, *ante*, and the First Schedule, p 271, *post*, all the powers and duties exercisable by the councils of non county boroughs and of urban districts either as local education authorities for elementary education under section 3 of the Education Act, 1921, 7 Halsbury's Statutes 88 or in relation to higher education under section 70, *ibid* 7 Halsbury's Statutes 168 are transferred to local education authorities under this Act, which consist of the councils of counties and of county boroughs except in the few cases where the Minister provides for the creation of a joint education board under Part I of the First Schedule, *supra*

Subsections (3) and (4) of section 6, *ante*, provide, in relation to this transfer of functions for the transfer of property which was used for educational purposes and of officers engaged on educational work to the new local education authorities

This section contains a number of provisions which are consequential upon the above mentioned transfers In particular, subsection (1) enables a former authority (as defined in section 114 (1), p 255, *post*), which can show that property which was held for educational purposes was given to it upon trust for purposes of such a nature that it should not be transferred to the local education authority, to retain the property in its own possession Examples of such types of property the donors of which clearly desired it to remain in local hands were mentioned by the Parliamentary Secretary to the Board of Education during the committee stage of the Bill in the House of Commons —

> "Members will have in mind various technical institutes and buildings of that description in different parts of the country which, in the past, when the State took very little interest in this sort of thing, were given by benefactors in the district At that time the power to spend money on that form of education was limited to whisky money and the product of a penny rate by the local education authority, and many of these institutions would not have been founded at all but for the fact that there was a generous benefactor who desired to have this particular service rendered in his home town In those cases, where such a history can be established, it is only right that the institution should remain with the local authority to whom it was originally devised I am assured that 'property' covers money, and that where there is a bequest that clearly was intended for very narrow local use, and there is still need for it the intention of the person who left the money will be honoured"

(a) **"Former authority"** By section 114 (1), p 255, *post*, this term means any authority which was a local education authority within the meaning of any enactment repealed by this Act or any previous Act It will be noted that by this definition the term not only covers authorities which were local education authorities for elementary education under section 3 of the Education Act, 1921, whose functions are transferred to the county councils under section 6, p 87, *ante*, but also the county councils themselves There is, however, some doubt as to whether this subsection will achieve the result intended (see the general note, *ante*) Local education authorities under the Act of 1921 were either local education authorities for elementary education or local education authorities for higher education In those parts of counties where there was not a separate authority for elementary education the county council was the authority for both forms of education Although, under section 3 (2) of that Act, 7 Halsbury's Statutes 88 the higher education authorities were the councils of counties and county boroughs, it was specifically provided that the councils of non county boroughs and urban districts, *though not local education authorities for higher education* should have the powers as respects higher education given under that Act *i e*, section 70 thereof No doubt the great majority of the properties to which this subsection is intended to relate have been used for purposes of higher education So far as they have been held, though carried on under powers relating to higher education, by local education authorities for elementary education, no question will arise, since such authorities are clearly within the definition of former authority" and they have been held for the purposes of functions exercisable by them under the Education Acts, 1921 to 1939' It would appear, however, that where such properties have been held by councils of non county boroughs or urban districts which were not also local education authorities for elementary education, those councils will not be able to take advantage of this subsection since

those councils, not having been local education authorities either for elementary or higher education, but having merely possessed certain higher education powers, are not former authorities for the purposes of this subsection. Similar questions may arise under subsections (2), (3) and (5) of this section.

(b) **" Property ".**—As used in this subsection the term is intended to include money.

(c) **" The date of the commencement of Part II of this Act ".**—Part II of the Act comes into operation on 1st April, 1945.

(d) **" Education Acts, 1921 to 1939 ".**—The Acts here referred to are:—

(1) Education Act, 1921 ; 7 Halsbury's Statutes 130 ;
(2) Education (Institution Children) Act, 1923 ; 7 Halsbury's Statutes 226 ;
(3) Education (Local Authorities) Act, 1931 ; 24 Halsbury's Statutes 173 ;
(4) Education (Necessity of Schools) Act, 1933 ; 26 Halsbury's Statutes 130 ;
(5) Education Act, 1936 ; 29 Halsbury's Statutes 117 ;
(6) Education (Deaf Children) Act, 1937 ; 30 Halsbury's Statutes 179 ;
(7) Education (Emergency) Act, 1939 ; 32 Halsbury's Statutes 1223 ;

(e) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(f) **" May by order direct ".**—As to the revocation and variation of such orders and directions, see section 111, p. 254, *post*.

(g) **" Section 6 of this Act ".**—See p. 87, *ante*.

(h) **" County ".**—Section 114 (1), p. 255, *post*, defines this term as an administrative county within the meaning of the Local Government Act, 1933 ; 26 Halsbury's Statutes 295.

(i) **" Where any question arises ".**—Such questions may arise under subsections (3) and (4) of section 6, pp. 87-8, *ante*.

(k) **" Officers, property, rights, or liabilities ".**—See respectively notes (q), (f) and (l) to section 6, pp. 92, 90 and 91, *ante*.

(l) **" The making of such adjustments ".**—As to the compensation of officers who are prejudicially affected by the Act, see section 98, p. 234, *post*. If the former authority and the local education authority are unable to agree, the Minister may, under subsection (4) of this section, make provision for an adjustment by giving directions for the purpose.

(m) **" By directions ".**—As to the revocation or variation of orders and directions, see section 111, p. 254, *post*.

97. Modification of 2 & 3 Geo. 6. c. 94.—For the purpose of the application of the Local Government Staffs (War Service) Act, 1939 (a) (which relates to the civil remuneration and superannuation of persons who cease to serve in certain civil capacities in order to undertake war service) *in relation to* :—

(*a*) any person who before the date of the commencement of Part II of this Act (b) has, in order to undertake war service (c), ceased to serve in the capacity of an officer (d) employed by the council of a county district (e) for the purposes of any functions exercisable by that authority under the Education Acts, 1921 to 1939 (f) ; and

(*b*) any person who before the said date has, in order to undertake war service, ceased to serve in any such capacity as is mentioned in paragraphs 15 and 16 of the first column of the Schedule to the said Act of 1939 (g), being a person in relation to whom the appropriate authority was, before the said date, the council of a county district ;

the local education authority (h) for the county (i) in which the county district is situated shall instead of the council of the county district be the " appropriate authority " (k). **[491]**

NOTES

The object of this section is to transfer to the county councils the obligation imposed on the former Part III authorities by the Local Government Staffs (War Service) Act, 1939 ; 32 Halsbury's Statutes 1118, to reinstate their officers, and teachers in non provided public elementary schools, who have undertaken war service.

(a) **" Local Government Staffs (War Service) Act, 1939 ".**—This Act received the Royal Assent on 5th September, 1939, and was deemed to have come into operation on the 1st *idem*. It empowers local authorities and certain other authorities to make up the balance of pay to their employees who undertake war service and to preserve their superannuation rights. Teachers are excluded from the part of the Act dealing with superannuation (see the Teachers Superannuation (War Service) Act, 1939), but not from the remainder.

(b) **" The date of the commencement of Part II of this Act ".**—Part II of the Act comes into operation on 1st April, 1945.

(c) **" War service ".**—This term is defined by section 14 of the Local Government Staffs (War Service) Act, 1939, as service, during the period of the present emergency, in any of the naval, military or air forces of the Crown, any employment during that period which the Minister [of Health] considers may properly be treated for the purposes of that Act in the same manner as service in those forces, and any employment during that period in civil defence service which is not by virtue of section 9 of that Act deemed for superannuation purposes to be employment by a local authority.

(d) **" Officer ".**—See note (q) to section 6, p 92 *ante*

(e) **" County district "** —See note (i) to section 6, p 91, *ante*

(f) **" The Education Acts, 1921 to 1939 ".**—For a list of these Acts, see note (d) to section 96, p 233, *ante*

(g) ***" Paragraphs 15 and 16 of the first column of the Schedule to the said Act of* 1939 ".**—These paragraphs are as follows —

' 15 Teacher officer or servant appointed by the managers of a public elementary school maintained but not provided by a local education authority for elementary education

16 Teacher, officer or servant of an institution aided by a local education authority out of the proceeds of any rate

(h) **" Local education authority "** —See section 6, p 87, *ante*, and the First Schedule, p 271 *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267 *post*

(i) **" County ".**—Section 114 (1), p 255, *post*, defines this word as an administrative county within the meaning of the Local Government Act, 1933

(k) **" Appropriate authority ".**—For the purposes of section 1 of the Local Government Staffs (War Service) Act 1939, 32 Halsbury s Statutes 1118, with regard to the making up of civil remuneration, subsection (4) of that section enacts that this term in relation to a person serving in any capacity specified in the first column of the Schedule to that Act, means the authority specified in the second column of that Schedule in relation to that capacity

98. *Compensation of persons prejudicially affected by this Act.*—(1) If in consequence of the extinguishment or transfer by this Act (a) of any functions exercisable by the council of any county district (aa), or the transfer by this Act of any officers (b) employed by any such council, any person who immediately before the date of the commencement of Part II of this Act (bb), was an officer employed by that council or by the council of the county (c) in which the county district is situated suffers direct pecuniary loss (d) by reason of the determination of his appointment (e) or the diminution of his emoluments (f), he shall, unless provision for his compensation for that loss is made by or under any other enactment for the time being in force (g), be entitled to receive compensation (h) under this subsection from the local education authority (i) for the area in which the county district is situated , and, for the purposes of any claim for compensation under this subsection the provisions of subsections (2) and (3) of section one hundred and fifty of the Local Government Act, 1933 (k), shall have effect as if —

(*a*) the extinguishment or transfer had been effected by virtue of an order made by the Minister of Health under Part VI of the said Act of 1933 (l) and coming into operation upon the date of the commencement of Part II of this Act , and

(*b*) the expression " existing officer, ' in those subsections, meant any person who, immediately before the said date, was an officer employed by the council of a county or county district in connection with any functions exercisable by that council under any enactment repealed or amended by this Act **[492]**

(2) If, in consequence of any school (m) becoming a special agreement school or a controlled school (n), or in consequence of the discontinuance (o) within six years after the passing of this Act (p) of any school maintained by a local education authority (q), any person who was a teacher in the school immediately before it became a special agreement school or a controlled school, or before the school was discontinued, as the case may be, suffers direct pecuniary loss by reason of his dismissal or the diminution of his emoluments, he shall unless provision for his compensation for that loss is made by or under any other enactment for the time being in force, be entitled to receive compensation from the authority under this section **[493]**

(3) For the purposes of the determination and payment of compensation under this section, the provisions of the Fourth Schedule to the Local Government Act, 1933 (r), shall have effect subject to the following modifications, that is to say —

(*a*) references therein to the Minister shall be construed as references to the Minister of Education, and sub-paragraph (1) of paragraph 1 thereof shall have effect as if after the word " prescribed " there were inserted the words " by the Minister of Education " ,

(*b*) references therein to a scheme or order shall be construed as references to this Act, and

(*c*) any period during which a person has been engaged in war service (s) within the meaning of the Local Government Staffs (War Service) Act, 1939 (t), shall be reckoned for the purposes of the said Schedule as a period of service in his office, and where any such period is so reckoned his emoluments during that period shall, for the purposes of sub-paragraph (2) of paragraph 4 of the said Schedule, be deemed to be such as he would have received if he had not been engaged in war service [494]

NOTES

This section provides for the compensation of officers of former Part III authorities and of councils exercising functions under section 70 of the Education Act, 1921 7 Halsbury's Statutes 108, and also of teachers who suffer direct pecuniary loss as a result of the passing of the Act The compensation payable will be calculated on the basis laid down in the Fourth Schedule to the Local Government Act, 1933, war service being taken into account.

(a) **"Extinguishment or transfer by this Act"**.—See section 6, p 87, *ante* and the First Schedule, p 271 *post* The main functions which a council of a county district has ceased to exercise as a result of this Act are the power to assist higher education under section 70 of the Education Act, 1921, and in the case of county district councils which were local education authorities for elementary education the whole of their functions relating to elementary education

(aa) **"County district"**.—See note (i) to section 6, p 91, *ante*

(b) **"Officers"**.—See note (q) to section 6, p 92, *ante*

(bb) **"The date of the commencement of Part II of this Act"**.—Part II of the Act comes into operation on 1st April, 1945

(*c*) ***"County"***.—*This term is defined by section 114 (1), p 255, post*

(d) **"Direct pecuniary loss"**.—The events raising a presumption that a direct pecuniary loss has occurred are stated in subsections (2) and (3) of section 150 of the Local Government Act, 1933 quoted in note (k), *post*

(e) **"The determination of his appointment"**.—As to the meaning of this phrase, see *Macdonald* v *Great Western Railway Co* [1930] 1 Ch 364, Digest Supp

(f) **"The diminution of his emoluments"**.—The term "emoluments" is defined in section 305 of the Local Government Act, 1933, and that definition will apply for the purposes of this section

(g) **"By or under any other enactment for the time being in force"**.—This means that cases which came within any other enactment, e g a scheme or order made under the Local Government Act, 1933, or section 123 of the Local Government Act, 1929, do not come within this section

(h) **"Compensation"**.—The rules for the assessment of compensation are quoted in note (r) *post*

(i) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(k) **"Subsections (2) and (3) of section one hundred and fifty of the Local Government Act, 1933"**.—These two subsections enact as follows —

(2) An existing officer who, at any time within five years after the date on which the scheme or order comes into operation, relinquishes office by reason of his having been required to perform duties which are not analogous to, or which are an unreasonable addition to, those which he was required to perform immediately before that date shall be deemed for the purposes of the scheme or order to have had his office determined in consequence of the scheme or order, and, unless the contrary is shown, to have suffered direct pecuniary loss in consequence of the scheme or order by reason of such determination

(3) An existing officer whose appointment is determined or whose emoluments are reduced within five years after the date on which the scheme or order comes into operation, because his services are not required or his duties are diminished (no misconduct being established), shall be deemed, unless the contrary is shown, to have suffered direct pecuniary loss in consequence of the scheme or order"

(l) **"An order made by the Minister of Health under Part VI of the said Act of 1933"**.—Part VI of the Local Government Act, 1933, deals with alterations of areas and in particular provides in section 140 for the making of orders for that purpose

(m) **"School"**.—See the definition of this expression in section 114 (1), p 255, *post*

(n) **"Special agreement school or a controlled school"**.—As to the classification of voluntary schools as controlled schools, aided schools and special agreement schools see section 15, p 113, *ante*

(o) **"In consequence of the discontinuance"**.—See, as to the discontinuance of schools maintained by the local education authority sections 13 (1) (*c*) and 14, pp 109 and 112, *ante*

(p) **"Within six years after the passing of this Act"**.—The Act received the Royal Assent on 3rd August 1944, the date here referred to is 3rd August, 1950

(q) **"Any school maintained by a local education authority"**.—This refers to county schools (see section 9 (2), p 100, *ante*), voluntary schools (*ibid*), nursery schools (section 9 (4), p 100, *ante*) and special schools (section 9 (5), p 100 *ante*) The term "maintain" is defined by section 114 (1) and (2) p 255, *post*

(r) **"The provisions of the Fourth Schedule to the Local Government Act, 1933"**.—As modified by paragraphs (*a*) and (*b*) of this subsection the Schedule provides as follows —

"Fourth Schedule

Provisions as to Determination and Payment of compensation to officers

1. Procedure for claiming compensation—(1) For the purpose of enabling a claim

for compensation to be assessed the claimant shall deliver to the local authority with the claim a statement containing such particulars as may be prescribed [by the Minister of Education]

(2) The said statement shall be accompanied by a statutory declaration that it is a true statement to the best of the knowledge, information and belief of the claimant

(3) The authority shall forthwith take the claim into consideration and assess the just amount of compensation, if any, and shall forthwith inform the claimant of their decision

(4) If a local authority fail to inform any claimant of their decision on his claim within six months after it has been delivered to them, the Minister [of Education] may, on application made to him by the claimant, direct the authority to do so within such time, not being less than one month, as may be specified in the direction

(5) A claimant, if so required by any member of the local authority by notice sent through the clerk of the authority, shall attend at a meeting of the authority, or of any committee appointed by the authority for the purpose, and answer on oath, which any justice of the peace present may administer, all questions asked by any member of the authority or committee touching the matters set forth in his claim and in the said statement, and shall further produce all books, papers and documents in his possession or under his control relating to the claim

2. General considerations to be applied.—For the purpose of determining whether compensation is payable to an officer and, if so, the amount of such compensation, regard shall be had to—

(*a*) the conditions upon which his appointment was made,

(*b*) the nature of his office,

(*c*) all the other circumstances of the case.

3 Power to award compensation by way of a lump sum in certain cases.—Compensation may be awarded either by way of an annual sum or by way of a lump sum representing the capital value of an annual sum

4. Assessment of compensation for determination of whole-time office.—(1) The annual sum payable as compensation in respect of the determination of a whole time office shall not exceed the aggregate of the following sums—

(i) for every year of the officer's service one sixtieth of an amount equal to the annual pecuniary loss which he has sustained by reason of the determination of the office,

(ii) in the case of service for twenty years or upwards, a sum equal to ten sixtieths of the said amount,

in the case of service for fifteen years and less than twenty years, a sum equal to seven sixtieths of the said amount,

in the case of service for ten years and less than fifteen years, a sum equal to five sixtieths of the said amount,

in the case of service for five years and less than ten years, a sum equal to three sixtieths of the said amount,

in the case of service for less than five years, a sum equal to one sixtieth of the said amount, and

(iii) in the case of an officer who was appointed as a specially qualified person or who before his appointment had been employed (otherwise than in an office within the meaning of this Schedule) as a deputy, assistant or clerk by a permanent officer for the purpose of the discharge of the latter's official duties, such additional sum, if any, not exceeding ten sixtieths of the said amount, as the local authority in their discretion and in consideration of his special qualifications or of his previous employment, as the case may be, may think fit to award

Provided that the compensation shall not in any event exceed two thirds of the said amount

(2) In assessing the amount of any pecuniary loss sustained by an officer by reason of the determination of his office regard shall be had as respects any emoluments either—

(*a*) to the amount of those emoluments received by him in respect of that office immediately before the material date, or

(*b*) to the average amount of those emoluments received by him in respect of that office during the period of five years next before the material date or such shorter period as may be reasonable in the circumstances

(3) In assessing the amount of any pecuniary loss sustained by an officer by reason of the determination of his office regard shall also be had to —

(*a*) any increase of the emoluments enjoyed by the officer at the material date which he has obtained by virtue of [the Education Act, 1944] of or anything done in pursuance of or in consequence of [the Education Act, 1944], and

(*b*) the emoluments of any office or other public appointment which he would have obtained on or after the material date if he had accepted offer made to him

(4) For the purpose of assessing any compensation payable in respect of the loss of a whole time office or of any two or more offices which in the aggregate involve the whole time service of the officer, any previous period of part time service shall be treated as though it were whole time service for a proportionately reduced period

(5) Where the material date has occurred at any time other than at the expiration of a complete year of the officer's service, the portion then expired of that year shall, for the purpose of calculating any period of service under this paragraph, be treated as a complete year if it exceeds six months, and if it does not shall be ignored

5. Assessment of compensation for determination of part-time appointment.—In the case of a claim for compensation in respect of the determination of a part time office, the compensation, if any, which would have been payable if the office had been a whole time office may be reduced by one quarter or by such other amount, if any, as may in the circumstances be reasonable

Provided that no reduction shall be made in the case of an officer who immediately before the material date held two or more offices and who devoted the whole of his time to the duties of such offices

6. Assessment of compensation for diminution of emoluments.—In the case of an officer who suffers any diminution of the emoluments of an office, the compensation shall not exceed a sum bearing the same proportion to the amount of compensation which could

have been awarded if his office had been determined, as the amount by which the emoluments of the office are diminished bears to the amount of those emoluments before diminution

7. War service to be reckoned in determining compensation.—If an officer was temporarily absent from his office during the late war whilst serving in His Majesty's forces or the forces of the Allied or Associated Powers, either compulsorily or with the sanction or permission of the authority in whose employment he was immediately before such temporary absence, such period of temporary absence shall be reckoned as service under that authority

Provided that in the case of an officer who, after the eleventh day of November, nineteen hundred and eighteen, voluntarily extended his term of service in the forces, no period of absence during any such extension shall be reckoned

8. Right of appeal.—If the claimant is aggrieved by the failure of the local authority to inform him of their decision upon his claim within the time required by any direction of the Minister [of Education], or by the refusal of the authority to grant any compensation, or by the amount of compensation assessed, the claimant may, within three months after the *failure, or after the date on which he receives notice of the decision of the authority, as the* case may be, appeal to the Minister [of Education], and the Minister [of Education] shall consider the case and determine whether any compensation, and if so what amount, ought to be granted to the claimant, and his determination shall be final

9. Date on which compensation commences.—The sum payable as compensation shall be or commence to be payable at the date fixed by the local authority, or, in case of appeal, by the Minister, and shall be recoverable as a debt due from the authority

10 Suspension of compensation.—(1) If a person receiving compensation under the [Education Act, 1944]—

(*a*) obtains any office or other public appointment, or

(*b*) receives, by virtue of the [Education Act, 1944], or of anything done in pursuance of or in consequence of the [Education Act, 1944] any increase of the emoluments which were enjoyed by him at the date as at which the compensation was assessed,

he shall not, so long as he holds that office or other public appointment or receives those increased emoluments, be entitled to receive any greater sum by way of compensation in respect of the office for which compensation is awarded than would make up the amount, if any, by which the emoluments which he is receiving falls short of the emoluments of the office in respect of which compensation was awarded

Provided that where a person held two or more offices at the date as at which the compensation was assessed or has been awarded compensation in respect of two or more offices, the Minister [of Education] may, on the application of that person or of any authority by whom the compensation is payable, modify the operation of the foregoing sub paragraph in relation to that person so far as is, in the opinion of the Minister [of Education] necessary in order equitably to meet the circumstances of the case

(2) Where an officer to whom compensation has been awarded under [the Education Act, 1944] *subsequently becomes entitled to a superannuation allowance in respect of any office* or other public appointment which he has accepted after the material date, and in calculating the amount of such allowance account is taken of any period of service in respect of which compensation is payable, then, if the compensation does not exceed such part of the superannuation allowance as is attributable solely to that service, the compensation shall cease to be payable, and if it exceeds such part of the superannuation allowance as aforesaid it shall be reduced by an amount equal to that part of the allowance

11. Forms.—*The Minister [of Education] may prescribe the form of any notice, state*ment, award or other document to be used in connection with a claim for compensation, and the forms so prescribed or forms as near thereto as circumstances admit, shall be used in all cases to which the forms are applicable

12. Interpretation.—For the purposes of this Schedule —

"Office" means any place, situation or employment, and includes the office of superintendent registrar, registrar of births and deaths, registrar of marriages, and the office of teacher in a public elementary school maintained but not provided by a local education authority, and "officer" has a corresponding meaning,

'Public appointment' means any employment the emoluments of which are payable out of public funds,

'Service' means whole time or part time service in any office after the officer has attained the age of eighteen years,

"Material date" means the date on which the determination of office or diminution of emoluments, as the case may be, takes effect

(s) **"War service"**.—See note (c) to section 97, p 233, *ante*

(t) **"Local Government Staffs (War Service) Act, 1939"**.—See section 97, p 233, *ante*, and the notes to that section

99. Powers of Minister in default of local education authorities or managers or governors.—(1) If the Minister is satisfied, either upon complaint by any person interested or otherwise, that any local education authority (a), or the managers or governors (b) of any county school (c) or voluntary school (d), have failed to discharge any duty imposed upon them (e) by or for the purposes of this Act, the Minister may make an order (f) declaring the authority, or the managers or governors, as the case may be, to be in default in respect of that duty, and giving such directions for the purpose of enforcing the execution thereof as appear to the Minister to be expedient, and any such directions shall be enforceable, on an application made on behalf of the Minister, by mandamus (g) **[495]**

(2) Where it appears to the Minister that by reason of the default of any person (i) there is no properly constituted body (k) of managers or

governors of any county school or voluntary school, the Minister may make such appointments and give such directions as he thinks desirable (l) for the purpose of securing that there is a properly constituted body of managers or governors thereof and may give directions rendering valid any acts or proceedings (m) which in his opinion are invalid or otherwise defective by reason of the default [496]

(3) Where it appears to the Minister that a local education authority have made default in the discharge of their duties relating to the maintenance (n) of a voluntary school, the Minister may direct that any act done by or on behalf of the managers or governors of the school for the purpose of securing the proper maintenance thereof shall be deemed to have been done by or on behalf of the authority, and may reimburse to the managers or governors any sums which in his opinion they have properly expended for that purpose, and the amount of any sum so reimbursed shall be a debt due to the Crown (o) from the authority, and, without prejudice to any other method of recovery, the whole or any part of such a sum may be deducted from any sums payable to the authority by the Minister in pursuance of any regulations relating to the payment of grants (p) [497]

NOTES

Subsection (1) replaces and extends the provisions of section 150 of the Education Act, 1921 In the first place the section relates not only to local education authorities, to which the former provision was limited, but also to the managers or governors of county and voluntary schools Secondly (except under section 105 (3), p 246 *post*), the Minister is no longer bound to hold a public inquiry, though he may hold a local inquiry if he thinks fit under section 93, p 233 *ante*, and would probably do so in relation to any matter of importance Subsections (3) and (4) of the section replace and in general re-enact section 151 of the Act of 1921 See also the terms of section 68, p 205, *ante*, which enables the Minister to give directions to a local education authority or the managers or governors of a county or voluntary school regarding the exercise of any power or the performance of any duty where he is of opinion that the authority, or the managers or governors, have acted or are proposing to act unreasonably

(a) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271 *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267 *post*

(b) **"Managers or governors".**—See note (d) to section 17, p 122, *ante*

(c) **"County school"** —See section 9 (2), p 100, *ante*

(d) **"Voluntary school".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p 113, *ante*

(e) **"Any duty imposed on them".**—Specific duties are imposed both upon local education authorities and upon the managers and governors of county and voluntary schools by numerous sections of the Act Duties may also be imposed upon either by the regulations which the Ministers, Education and Health, are empowered to make under the Act and upon the managers and governors by the rules of management and articles of government which are to be made under section 17 p 121, *ante* Reference may be made to the cases of *Board of Education* v *Rice*, [1911] A C 179 19 Digest 602, *290*, and *R* v *Poplar Borough Council, Ex parte London County Council* [1922] 1 K B 72, 1 K B 95, 38 Digest 634 *1537*

(f) **"Make an order".**—As to the revocation and variation of orders and directions, see section 111, p 254, *post* Before making such an order the Minister may, but is not bound to, hold a local inquiry under section 93, p 233, *ante*

(g) **"Mandamus"** —The case of *R* v *Staines Union* (1893), 58 J P 182, affords an example of the issue of a *mandamus* at the instance of the Minister of Health The court is bound to grant the writ at the request of the Minister, unless there has been some legal error or some omission to apply the ordinary legal procedure In the event of failure to comply with a writ of *mandamus*, writs of attachment may be obtained against members of the authority responsible for the failure (*R* v *Worcester Corporation* (1905), 69 J P 296)

(i) **"Person".**—The word "person" is not defined in the Act, but section 19 of the Interpretation Act, 1889, enacts that in that Act and in every Act passed after the commencement of that Act, unless the contrary intention appears, the expression is to include any body of persons corporate or unincorporate

(k) **"No properly constituted body".**—Section 17, p 121, *ante*, provided for the constitution of a body of managers or governors for every county school and every voluntary school in the case of a primary school by means of an instrument of management (as to which see section 18, p 127, *ante*), and in the case of a secondary school by means of an instrument of government (as to which see section 19 p 129, *ante*) Section 20, p 130, *ante*, enables two or more schools to be grouped under one management In the case of voluntary schools, section 32, p 150, *ante*, makes provision for their management or government, as the case may be, until the determination of the question as to whether the school is to be a controlled, aided or special agreement school

(l) **Give such directions as he thinks desirable".**—See note (f), *ante*

(m) **"Any acts or proceedings".**—As to the proceedings of managers and governors of county and voluntary schools, see section 21, p 132 *ante*

(n) **"Maintenance"** —Section 114 (1) and (2), p 255, *post*, defines the term "maintain", in relation to schools and county colleges

(o) **"A debt due to the Crown"** —The Administration of Justice (Miscellaneous Provisions) Act, 1933, section 4, prescribes the method of recovering debts due to the Crown but in

this instance the Minister will no doubt generally prefer the simpler alternative of deducting the sum due from any grants payable to the authority.

(p) **"Regulations relating to the payment of grants".**—See sections 100 and 101, pp. 239 and 241, *post*.

FINANCIAL PROVISIONS

100. Grants in aid of educational services.—(1) The Minister shall by regulations (a) make provision :—

(*a*) for the payment by him to local education authorities (b) of annual grants in respect of the expenditure incurred by such authorities in the exercise of any of their functions relating to education, other than their functions relating to the medical inspection and treatment (c) of pupils (d) ;

(*b*) for the payment by him to persons other than local education authorities (e) of grants in respect of expenditure incurred or to be incurred for the purposes of educational services provided by them or on their behalf or under their management or for the purposes of educational research (f) ; and

(*c*) for the payment by him (g), for the purpose of enabling pupils to take advantage without hardship to themselves or their parents (h) of any educational facilities available to them, of the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable (i), and of sums by way of scholarships, exhibitions, bursaries and other allowances in respect of pupils over compulsory school age (k), including pupils undergoing training as teachers (l). [498]

(2) The Minister of Health shall by regulations (m) make provision for the payment by him to local education authorities of annual grants in aid of the expenditure incurred by such authorities in the exercise of their functions relating to the medical inspection and treatment of pupils.

If arrangements are made for the exercise by the Minister of the functions imposed by this subsection upon the Minister of Health, then, while any such arrangements are in force, this subsection shall have effect as if for the reference therein to the Minister of Health there were substituted a reference to the Minister. References in any regulations made under this subsection to either of those Ministers shall, unless the context otherwise requires, be construed as references to the Minister by whom functions are for the time being exercisable under this subsection, and any such regulations may be varied or revoked by that Minister. [499]

(3) Any regulations made by the Minister or the Minister of Health under this section may make provision whereby the making of payments by him in pursuance thereof is dependent upon the fulfilment of such conditions as may be determined by or in accordance with the regulations, and may also make provision for requiring (n) local education authorities and other persons to whom payments have been made in pursuance thereof to comply with such requirements as may be so determined. [500]

(4) Where the Minister is satisfied that the persons responsible for the management of any school or other educational institution (o) are, by reason of the provisions of any trust deed (p) or other instrument relating to the management of the school or institution, unable to fulfil any condition or comply with any requirement imposed by regulations made under this section, he may, after consultation with them, by order (q) make such modifications of the said provisions as may be necessary for the purpose of enabling them to fulfil that condition or comply with that requirement ; and any such trust deed or other instrument shall, during such period as may be specified in the order, have effect subject to any modifications so made. [501]

(5) Nothing in this section shall affect any grants in aid of university education (r) payable out of moneys provided by Parliament otherwise than in accordance with the provisions of this Act. [502]

NOTES

The main financial provisions of the Education Act, 1921, contained in sections 118–120 of that Act, are substantially reproduced in this section It differs from them, however, in at least one major respect, in that the Minister is, by paragraphs (*b*) and (*c*) of subsection (1), given explicit power to give grants to bodies other than local education authorities, to pay the whole or part of the fees of pupils attending fee charging schools, and to award scholarships and maintenance allowances to pupils over compulsory school age

The Financial Memorandum appended to the Bill as introduced into the House of Commons indicates the Government proposals in general though, as will be shown, they have been somewhat amended in light of representations made during the passage of the Bill The Memorandum commenced by giving in tabular form an outline of the expected additional public expenditure over and above the estimated cost of the educational services immediately before the coming into operation of the Act (capital expenditure being expressed in terms of loan charges) This showed that the ultimate additional cost would be reached gradually over a number of years and, on the assumption that the school leaving age is not postponed, the additional expenditure under the six main headings, viz —

(1) Recasting full time education,
(2) Reform of dual system,
(3) Young people's (now called 'county") colleges,
(4) Technical and adult education,
(5) Nursery schools, and
(6) Medical inspection and treatment

was expected to rise from a total of £5 5 millions in the first year to £47 3 millions in the seventh year and ultimately to £79 8 millions Since the date on which the school leaving age is to be raised to 16 has not yet been fixed the cost of this step is included only in the ultimate total

The Memorandum indicates that the first task of the new local education authorities is to prepare their development plans (section 11, p 103, *ante*) and submit them to the Minister, who will then make Local Education Orders under section 12, p 107, *ante* Until these steps which will occupy between one and two years from 1st April, 1945, have been taken, the recasting of the system of full time education and the reform of the dual system cannot begin to operate fully It is not anticipated that in respect of this period there will be any substantial additional expenditure on school premises apart from the acquisition of sites, thereafter the rate of development will depend upon the availability of building labour and materials It is assumed, however, that there will be a relatively substantial early expansion of nursery schools, which do not present the same difficulties of accommodation The cost of abolishing tuition fees in primary and secondary schools maintained by local education authorities (section 61, p 196, *ante*) has been included from the 1st year

Between the date of the Royal Assent (3rd August, 1944) and 1st April, 1945, the former local education authorities, and grants, continue on the old basis Since the new authorities are charged, as from 1st April 1945, with all educational functions, a single combined grant for all forms of education will operate from that date, except as regards expenditure on school meals and milk Thereafter there will be three types of grant, viz —

(1) A main grant to each authority based on the percentage which the total grants for education for that authority's area bore to the corresponding expenditure on education in 1938–39 This percentage is to be increased by stages to a total increase of 5 in 1948–49,
(2) additional grants to the poorer areas (noted, *post*),
(3) grants at special rates in respect of expenditure on school meals and milk

As regards the poorer areas, a sum of between £1 5 and £2 millions is to be provided which will cover some 30–40 of the poorer authorities

Additional provisions providing for the continuation of the special grants payable to Welsh local education authorities under the Welsh Intermediate Education Act, 1889, is made in section 101, p 241 *post*, whilst sections 102–105, pp 242 to 246, *post*, enable the Minister to make various types of special payment to the managers or governors of aided and special agreement schools

(a) **"Regulations".**—As to the making of regulations under the Act by the Minister of Education and the Minister of Health, see section 112, p 254, *post*

(b) **"Local education authorities".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(c) **"Medical inspection and treatment".**—These terms are defined in section 114 (1), p 255, *post*, whilst section 48, p 179, *ante*, makes provision for these services As to the grants payable in respect of them, see subsection (2) of this section

(d) **"Pupils".**—Section 114 (1), p 255, *post*, provides that the word "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act

(e) **"Persons other than local education authorities".**—By section 19 of the Interpretation Act, 1889, in that Act and in every Act passed after the commencement of that Act the expression "person", unless the contrary intention appears, is to include any body of persons corporate or unincorporate

(f) **"Educational research".**—Under this paragraph the Minister is enabled to make grants in aid of educational research independently of any assistance which may be given by the local education authority under section 82, p 220, *ante*

(g) **"For the payment by him".**—This power also is additional to and may be exercised independently of any assistance which may be given by the local education authority by virtue of regulations made by the Minister under section 81, p 219, *ante*

(h) **"Parents".**—By section 114 (1), p 255, *post*, "parent", in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person

(i) **"Schools at which fees are payable".**—See the definition of "school" in section 114 (1), p 255, *post* Section 61 (1), p 196, *ante*, prohibits the charging of fees in respect of admission to any school maintained by a local education authority, or to any county college, or in respect of the education provided in any such school or college See note (j) to section 81, p 220, *ante*.

(k) **" Compulsory school age ".**—Section 114 (1), p. 255, *post*, provides that this term, subject to the provisions of section 38, p. 160, *ante*, has the meaning assigned to it by section 35, p. 155, *ante*. As to the time of attainment of any particular age, see section 114 (5), p. 258, *post*.

(l) **" Pupils undergoing training as teachers ".**—See note (i) to section 81, p. 220, *ante*.

(m) **" The Minister of Health shall by regulations ".**—Regulations of the Minister of Health are to be made in the same manner as those of the Minister of Education—see section 112, p. 254, *post*. See, however, the second paragraph of this subsection with regard to the exercise of the powers of the Minister of Health by the Minister of Education.

(n) **" May also make provision for requiring ".**—Failure to comply with such a requirement will constitute failure to comply with a duty imposed for the purposes of this Act, thus enabling the provisions of section 99, p. 237, *ante*, to be invoked, in the cases of local education authorities and of managers and governors of county and voluntary schools.

(o) **" Other education institution ".**—See note (i) to section 47, p. 178, *ante*.

(p) **" Trust deed ".**—*By section 114 (1), p. 255, post*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under the Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof.

(q) **" He may by order ".**—As to the revocation or variation of such an order, see section 111, p. 254, *post*.

(r) **" Grants in aid of university education ".**—This refers to grants made by the Treasury through the medium of the University Grants Committee.

101. Special financial provisions relating to Wales and Monmouthshire.—(1) Subject to the provisions of this section (a), the Minister shall pay to the local education authority (b) for every area in Wales and Monmouthshire a special annual grant in respect of any school (c) which is maintained or assisted (d) by the authority, being a school in respect of which grants were payable immediately before the date of the commencement of Part II of this Act (e) under section nine of the Welsh Intermediate Education Act, 1889 (f). [503]

(2) The grants to be so paid shall be of such amounts as may from time to time be determined by regulations made by the Minister (g), so, however, that the total sum payable for any financial year (h) under the provisions of this section in respect of the schools situated within the area of any county (i) or county borough shall not exceed the maximum amount which was payable in respect of those schools under the provisions of the said section nine for the year ending with the thirty-first day of March nineteen hundred and twenty-nine. [504]

(3) The regulations made for the purposes of this section shall make provision whereby the grant payable thereunder in respect of a school for any year shall be withheld, or reduced by such amount as may be determined in accordance with the regulations, unless the Minister is satisfied, after such inspection and report as may be so determined (k), that the school complies with such standards of efficiency as may be specified in the regulations. [505]

(4) As from such date as the Minister may by order (l) appoint—

(*a*) no further sums shall become payable out of any county fund or out of the general rate fund of any county borough under the provisions of any scheme made under the Welsh Intermediate Education Act, 1889;

(*b*) the provisions of any such scheme, so far as they relate to the payment to the Central Welsh Board (m) of sums calculated by reference to the product of a rate, and section forty-two of the Education Act, 1918 (n), shall cease to have effect; and

(*c*) the council of every county and county borough in Wales and Monmouthshire shall make to the Central Welsh Board an annual payment calculated by reference to a percentage of the product of a rate of one half-penny in the pound in that county or county borough for the year ending with the thirty-first day of March nineteen hundred and twenty-nine; and the times at which the said payments are to be made and the percentages by reference to which they are to be calculated shall be such as may be determined by the Central Welsh Board for each year in respect of which they fall to be made, so, however, that the percentage so determined in respect of each year shall be a uniform percentage for all the councils by which the payments are to be made, and

the percentage so determined in respect of any year shall not exceed twenty-two and one half per cent. [506]

(5) Nothing in this section shall prevent the payment of grants to any local education authority in accordance with any other provision of this Act (o). [507]

NOTES

This section enables the Minister to continue to pay to the Welsh local education authorities the special grants which have hitherto been payable under section 9 of the Welsh Intermediate Education Act, 1889, as amended by section 82 of the Local Government Act, 1929. Sub section (4) of the section provides, in addition, for the amendment of the schemes made under the Act of 1889 so as to discontinue the payment of rate monies into the funds set up thereunder These rate contributions will no longer be called for when the costs of maintaining the schools under the general provisions of the present Act are met by the local education authorities. Following and in consequence of these changes, paragraph (c) of subsection (4), *ante*, makes provision for the preservation of the existing financial position of the Central Welsh Board.

(a) **" Subject to the provisions of this section ".**—This refers to the provisions of subsection (3) It will be noted that, provided the Minister is satisfied with the efficiency of the school, the special grant must be paid under this section.

(b) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. This section applies only to Wales and Monmouthshire.

(c) **" School ".**—By section 114 (1), p 255, *post*, this term, subject to the qualification contained in this section, means an institution for providing primary or secondary education or both primary and secondary education, being a school maintained by a local education authority, an independent school, or a school in respect of which grants are made by the Minister to the proprietor of the school.

(d) **" Maintained or assisted ".**—The words " maintain " and " assist " are, in relation to any school or county college, given by section 114 (1), p 255, *post*, the meanings assigned to them by subsection (2) of that section.

(e) **" The date of the commencement of Part II of this Act ".**—Part II of the Act comes into operation on 1st April, 1945.

(f) **" Section nine of the Welsh Intermediate Education Act, 1889 ".**—By section 114 (8), p 258, *post*, unless the context otherwise requires, references in the Act to any enactment or any provision of any enactment are to be construed as references to that enactment or provision as amended by any subsequent enactment, including this Act. As amended by section 82 (1) of the Local Government Act, 1929, section 9 of the Act of 1889 (both provisions being repealed by section 121 and the Ninth Schedule, pp. 270 and 294, *post*) required the Board of Education to make an annual grant to each school aided by the county and subject to a scheme made under that Act As to the making of schemes under that Act, see section 3, *ibid.*

(g) **" By regulations made by the Minister ".**—As to the making of regulations under the Act see section 112, p. 254, *post*. Under proviso (a) to section 121, p. 270, *post*, regulations made under an enactment hereby repealed are to continue in operation and have effect as if made under the Act and may be varied or revoked accordingly. For the time being, therefore, the Welsh Intermediate Education Act Grant Regulations, 1930 (S.R & O. 1930, No. 204) will continue in force.

(h) **" Any financial year ".**—This expression is not defined in the Act, but Article 1 of the Welsh Intermediate Education Act Grant Regulations, 1930 (S.R & O. 1930, No 204), provides that the word " year " as used in those regulations means a year beginning on the 1st April.

(i) **" County ".**—By section 114 (1), p. 255, *post*, this means an administrative county within the meaning of the Local Government Act, 1933.

(k) **" After such inspection and report as may be so determined ".**—See Article 5 of the Welsh Intermediate Education Act Grant Regulations, 1930 (S R. & O. 1930 No. 204).

(l) **" By order ".**—As to the revocation or variation of such an order, see section 111, p. 254, *post*

(m) **" Central Welsh Board ".**—The Central Welsh Board is a body established by a scheme under the Welsh Intermediate Education Act, 1889, for the purpose of conducting examinations and inspections relating to intermediate schools in Wales and Monmouthshire.

(n) **" Section forty-two of the Education Act, 1918 ".**—This section substituted for the yearly sum payable to the Central Welsh Board under the scheme regulating the intermediate and technical education fund of any county as defined by the Act of 1889, certain variable yearly sums payable out of the county rate or, in the case of a county borough, out of the borough rate.

(o) **" Any other provision of this Act ".**—See section 100, p. 239, *ante*

102. Maintenance contributions payable by the Minister in respect of aided schools and special agreement schools.—The Minister shall pay to the managers or governors (a) of every aided school (b) and of every special agreement school (c) maintenance contributions (d) equal to one half of any sums expended by them in carrying out their obligations under paragraph (*a*) of subsection (3) of section fifteen of this Act (e) in respect of alterations (f) to the school buildings and repairs to the school premises (g) :

Provided that no maintenance contribution shall be payable under this section in respect of any expenditure incurred by the managers or governors of a special agreement school in the execution of repairs or alterations for the execution of which provision is made by the special agreement relating to the school (h). [508]

NOTES

This and the next following section provide for the payment of grants by the Minister in respect of aided schools and special agreement schools to which reference has been made in the general note to section 15, p 113, *ante* This section, in particular, ensures that the managers and governors of aided and special agreement schools shall receive a grant of 50 per cent towards the cost of any alterations which may be required to the school buildings, and of 50 per cent of the cost of external repairs The next section deals with the payment of grant towards the cost of substituted premises or of transferred schools under section 16, p 119, *ante* Thus, by reason of these two sections the financial liability of the managers or governors will be limited to half the cost of alterations and improvements and of external repairs

Moreover, under section 104, p 244, *post*, the Minister is enabled to make special grants up to 50 per cent of the cost of a new aided school or special agreement school which, though not established in substitution for a discontinued school, is established wholly or partially on account of the need for providing education for a substantial number of displaced pupils (as defined in subsection (2) thereof) In addition, section 105, p 246, *post*, enables the Minister to make loans to aided schools and special agreement schools in respect of initial expenditure (as defined in subsection (2) thereof)

As to the application of the Act to London and the Isles of Scilly see sections 117 and 118, pp 266 and 267, *post*

(a) **"Managers or governors".**—See note (d) to section 17, p 122, *ante*

(b) **"Aided school".**—See section 15, p 113, *ante*, and particularly note (c) to that section

(c) **"Special agreement school".**—See section 15, p 113, *ante*, and particularly note (d) to that section

(d) **"Maintenance contributions".**—Section 114 (1), p 255, *post*, provides that in relation to any voluntary school this expression means a contribution payable under this section

(e) **"Obligations under paragraph (a) of subsection (3) of section fourteen of this Act".**—Section 15 (3) (*a*), p 113, *ante*, imposes upon the managers or governors of aided schools and special agreement schools an obligation to pay any expenses incurred in effecting such alterations to the school buildings as may be required by the local education authority for the purpose of securing that the school premises should conform to the prescribed standards, and any expenses incurred in effecting repairs to the school premises not being repairs which are excluded from their responsibility by the following paragraph

Paragraph (*b*) of the same subsection provides that the managers or governors of such schools will not be responsible for repairs to the school playground or playing fields or to the interior of the school buildings or for repairs necessary in consequence of the use of the premises, in pursuance of any direction or requirement of the authority, for purposes other than those of the school

(f) **"Alterations".**—Section 114 (1), p 255, *post*, provides that this expression, in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school As here used, the term relates to "school buildings", which is a narrower term than "school premises"

(g) **"School premises".**—By section 114 (1), p 255, *post*, the term "premises", in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house

(h) **"The special agreement relating to the school".**—Section 15 (2), p 113, *ante*, provides (*inter alia*) that the Minister may direct that any voluntary school with respect to which he is satisfied that the managers or governors of the school will be willing, with the assistance of the maintenance contribution payable by the Minister under this section, to defray the expenses which would fall to be borne by them under subsection (3) (*a*) of that section shall, if a special agreement has been made with respect to the school under the Third Schedule, p 283, *post*, be a special agreement school See particularly the general note to that section Expenses to be incurred in pursuance of a special agreement are within the scope of the term "initial expenses" with respect to which the Minister may make a loan to the managers or governors under section 105, p 246, *post*

103. Power of the Minister to make grants in respect of aided schools and special agreement schools transferred to new sites or established in substitution for former schools.—(1) Where the Minister by an order made under section sixteen of this Act (a) authorises the transfer of any voluntary school (b) to a new site or directs that a voluntary school or schools proposed to be established shall be established in substitution for a school or schools to be discontinued, then, if the school to be transferred or any school to be established in pursuance of the order is to be maintained (c) as an aided school (d) or a special agreement school (e), the Minister may pay to the managers or governors (f) of the school in respect of any sums expended by them in the construction of the school (g) a grant not exceeding one half thereof

Provided that no grant shall be payable under this section to the managers or governors of a special agreement school in respect of any sums expended by them in the execution of proposals to which the special agreement for the school relates (i) **[509]**

(2) For the purposes of this section any sum expended for the purpose of providing a site for a school (k) shall be deemed to be expended in the construction of the school **[510]**

(3) Without prejudice to the general discretion of the Minister as to

the making of any grant under this section and as to the amount of any such grant, the Minister shall, in determining the amount of any such grant, take into account any sums which may accrue to the managers governors or trustees of the school in respect of the disposal of the site (l) from which the school is to be transferred, or of the sites of the discontinued schools as the case may be [511]

NOTES

This and the last preceding section provide for the payment of grants by the Minister in respect of aided schools and special agreement schools to which reference has been made in the general notes to sections 15 and 16, pp 113 and 119, *ante* In particular this section enables the Minister, if he thinks fit, to pay up to 50 per cent of the cost of premises provided in substitution for one or more previously existing schools, or where a school has been transferred to a new site because the existing premises could not be so altered as to conform to standards laid down by the Minister, or as a result of movements of population or of slum clearance or other action of a housing or planning authority

Moreover, under section 104, p 244 *post*, the Minister is enabled to make special grants up to 50 per cent of the cost of a new aided school or special agreement school which, although not established in substitution for a discontinued school, is established wholly or partially on account of the need for providing education for a substantial number of displaced pupils (as defined in subsection (2) thereof) In addition, section 105, p 246, *post*, enables the Minister to make loans to aided schools and special agreement schools in respect of initial expenditure (as defined in subsection (2) thereof)

As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(a) **"By an order made under section sixteen of this Act".**—Two forms of order are provided for under section 16, p 119, *ante*, viz —

(1) Subsection (1) enables the Minister by order to authorise the transfer of *(inter alia)* a voluntary school to a new site either because it is not reasonably practicable to make the necessary alterations to the existing school premises for securing that they conform to the prescribed standards, or in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relting to housing or to town and country planning ,

(2) Subsection (2) enables the Minister by order to direct that a proposed new voluntary school shall be deemed to be in substitution for another voluntary school or schools which is or are to be discontinued

As to the revocation or variation of orders and directions, see section 111 p 254, *post*

(b) **"Voluntary school".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p 113, *ante*

(c) **"Maintained".**—Section 114 (1), p 255, *post*, provides that, in relation to any school or county college, the word "maintain" has the meaning assigned to it by subsection (2) of that section

(d) **"Aided school"** —See section 15, p 113, *ante*, and particularly note (c) to that section

(e) **"Special agreement school".**—See section 15, p 113, *ante*, and particularly note (d) to that section

(f) **"Managers or governors".**—See note (d) to section 17, p 112 *ante*

(g) **"Any sums expended by them in the construction of the school".**—This phrase includes the cost of providing the site—see subsection (2) of this section

(i) **"Proposals to which the special agreement for the school relates".**—See note (h) to section 102 p 242 *ante*

(k) **"A site for a school".**—Since, by section 114 (1), p 255, *post*, the word "premises" in relation to any school includes any detached playing fields (though not a teacher's dwelling house), the provision of playing fields will be deemed to be included in the provision of a site for a school

(l) **"Disposal of the site".**—As to the power of the trustees of the school to sell or exchange the site of the school, see section 14 of the School Sites Act, 1841

104. Power of the Minister to make grants in respect of aided schools and special agreement schools established for the accommodation of displaced pupils.—(1) Where the Minister has approved proposals submitted to him under subsection (2) of section thirteen of this Act (a) that any school (b) proposed to be established should be maintained (c) by a local education authority (d) as a voluntary school (e) and has directed that the proposed school shall be an aided school or a special agreement school (f), then, if the Minister is satisfied that although the proposed school will not be in substitution for one or more discontinued schools (g), yet the establishment thereof is wholly or partially due to the need of providing education for a substantial number of displaced pupils (h), he may by order certify (i) as expenses attributable to the provision of education for displaced pupils so much of the amount expended in the construction of the school (k) as is in his opinion so attributable, and may pay to the managers or governors (l) of the school a grant not exceeding one half of the expenses so certified

Provided that no grant shall be payable under this section to the managers or governors of a special agreement school in respect of any sums

expended by them in the execution of proposals to which the special agreement for the school relates (m) [512]

(2) For the purposes of this section—

(*a*) the expression " displaced pupils " means, in relation to any such proposed school as aforesaid pupils (n) for whom education would, in the opinion of the Minister have been provided in some other aided school or special agreement school if that school had not ceased to be available for them in consequence of its having ceased to be used for providing both primary and secondary education (o) or in consequence of a substantial reduction in the number of pupils for whom education is to be provided in it and

(*b*) any sum expended for the purpose of providing a site for a school (p) shall be deemed to be expended in the construction of the school [513]

NOTES

This section deals with the somewhat difficult problem of providing help for voluntary schools which are called upon to deal with children who have moved from one part of the country to another or from one part of the area of a local education authority to another The question which arises when it becomes necessary to transfer a whole school is dealt with in section 103, p 243 *ante* This section, on the other hand, provides for the smaller and yet sometimes more difficult problem where numbers of children are moved from different schools to some other part of the country, the old school remaining in use for the reduced number of pupils The denomination cannot dispose of the school and is faced with the problem of providing for the children who have been moved, in the place to which they have gone (Parliamentary Secretary to the Board of Education, during the consideration of the Bill in the House of Commons) The Parliamentary Secretary also said

" Some of these people will have come, I imagine, from devastated areas some will be brought out under slum clearance schemes, and others may even be brought out under a private enterprise building scheme But where you find a group of children—we have used the words ' substantial number ' because they must have some relationship to the use of the original school and the future school—who come from a denominational school, and have moved out to a place where the denomination desires to provide accommodation, we shall be able to make that accommodation When the new school is being considered, let us suppose there are children from three schools who number 150 That would certainly be a substantial number, and I am sure that hon members would not expect me to day to go into the question of what is the minimum of a substantial number They desire to build a school for 250 or 300 children It is clear that in respect of these 150 children, they are only to get the same rate of grant as if they were dealing with a school on the original site What may happen with regard to the other 100 or 150 children will have to be determined by what relationship they previously had to denominational schools "

In considering this section regard should also be had to sections 102 and 103 pp 242 and 243, *ante*, and section 105, p 246, *post*

(a) **" Subsection (2) of section thirteen of this Act "**.—Section 13 (2), p 109, *ante*, requires any persons who propose (or who represent any persons who so propose) that a school which is not a voluntary school, or a proposed school, should be maintained by a local education authority as a voluntary school to submit proposals for that purpose to the Minister

(b) **" School "**.—This term is defined by section 114 (1), p 255, *post*, but is subject to the qualification used in this section

(c) **" Maintained "**.—Section 114 (1), p 255, *post*, provides that in relation (*inter alia*) to any school the word ' maintain ' has the meaning assigned to it by subsection (2) of that section

(d) **" Local education authority "**.—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267 *post*

(e) **" Voluntary school "**.—See sections 9 (2) and 15, pp 100 and 113, *ante*

(f) **" An aided school or a special agreement school "**.—As to the classification of voluntary schools as controlled schools, aided schools and special agreement schools, see section 15 p 113, *ante*

(g) **" Will not be in substitution for one or more discontinued schools "** —Section 16 (2), p 119, *ante*, enables the Minister to direct in certain circumstances that a voluntary school shall be deemed to be in substitution for a discontinued school or schools, and section 103, p 243, *ante*, authorises the Minister to make grants to the managers or governors in respect of the cost of constructing the substituted school

(h) **" A substantial number of displaced pupils "**.—As to the meaning of the term ' displaced pupils ', see subsection (2) of this section The phrase " substantial number " is not defined in the Act, and the decision as to what is a substantial number is therefore within the discretion of the Minister The remarks of the Parliamentary Secretary to the Board of Education, quoted in the general note to this section, *ante*, will be of interest

(i) **" He may by order certify "**.—As to the revocation or variation of such an order, see section 111, p 254, *post*

(k) **" The construction of the school "** —The cost of construction of the school includes, by subsection (2) (*b*) of this section, any sum expended for the purpose of providing a site for the school

(l) **" Managers or governors "**.—See note (d) to section 17, p 122, *ante*

(m) **" Proposals to which the special agreement for the school relates "**.—See note (h) to section 102 p 242, *ante*

(n) "**Pupils**".—Section 114 (1), p 255, *post*, provides that the expression "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act

(o) "**Primary and secondary education**".—Both these terms are, by section 114 (1), p 255, *post*, given the meanings assigned to them by section 8, p 97, *ante* Subsection (2) of the latter section provides that, in fulfilling their duties of securing that sufficient schools for providing primary and secondary education are available for their areas, local education authorities shall have regard (*inter alia*) to the need for securing that primary and secondary education are provided in separate schools As to what this means, see note (*o*) to section 8, *ante*, and also section 114 (3), p 258, *post*

(p) "**A site for a school**".—Since, by section 114 (1), p 255, *post*, the word "premises" in relation to a school includes any detached playing fields (though not a teacher's dwelling house), the provision of playing fields will be deemed to be included in the provision of a site for a school

105. Power of Minister to make loans to aided schools and special agreement schools in respect of initial expenditure.—(1) If upon the application of the managers or governors (a) of any aided school (b) or special agreement school (c) the Minister is satisfied after consultation with persons representing them (d) that their share of any initial expenses (e) required in connection with the school premises (f) will involve capital expenditure which, in his opinion having regard to all the circumstances of the case, ought properly to be met by borrowing, he may make to the managers or governors of the school for the purpose of helping them to meet that expenditure, a loan of such amount at such rate of interest and otherwise on such terms and conditions (g) as may be specified in an agreement made between him and them with the consent of the Treasury [514]

(2) For the purposes of this section, the expression "initial expenses" means in relation to any school premises—

(*a*) expenses to be incurred in defraying the cost of any alterations (h) required by the development plan (i) approved by the Minister for the area ,

(*b*) expenses to be incurred in pursuance of any special agreement (k) ,

(*c*) expenses to be incurred in the construction of any school (l) which by virtue of an order made under section sixteen of this Act (m), is deemed not to be a newly established school or is deemed to be in substitution for any discontinued school or schools ,

(*d*) expenses certified by the Minister under the last foregoing section (n) as being attributable to the provision of education for displaced pupils (o) ;

and the managers' or governors' share of any such initial expenses shall be taken to be so much thereof as remains to be borne by them after taking into account the amount of any maintenance contribution (p), grant under a special agreement (q), or grant under either of the last two foregoing sections (r) as may be paid or payable in respect of those expenses [515]

(3) If upon an application being made to him under subsection (2) of section fifteen of this Act (s) for an order directing that a school shall be an aided school or a special agreement school it appears to the Minister that the area served by the school will not be also served by any county school (t) or controlled school (u), then, unless he is satisfied that the managers or governors of the school will be able to defray the expenses which would fall to be borne by them under paragraph (*a*) of subsection (3) of that section (x) without the assistance of a loan under this section, the Minister shall consult such persons or bodies of persons as appear to him to be representative of any religious denomination which, in his opinion having regard to the circumstances of the area, is likely to be concerned ; and, unless after such consultation he is satisfied that the holding of a local inquiry (y) is unnecessary, shall cause such inquiry to be held before determining the application [516]

NOTES

This section, which is intimately related to the three foregoing sections (sections 102, 103 and 104, pp 242, 243 and 244, *ante*), enables the Minister to make loans to the managers or governors of aided and special agreement schools in respect of "initial expenses", as defined in subsection (2) of the section Such loans may be made in four differing circumstances —

(1) to enable the managers or governors to carry out any alterations required by the development plan approved by the Minister for a particular area (this being a loan in respect

of that half of the cost which is to be borne by the managers or governors, the other half being defrayed by means of the maintenance contribution to be paid under section 102 *ante*),

(2) in the case of a special agreement school only, to enable the managers or governors to defray the costs of carrying out the special agreement for the school (section 15, p 113, *ante*, and the Third Schedule, p 283, *post* In relation to this matter see the proviso to section 102, *ante*, section 103 (3), p 243, *ante*, and the proviso to section 104 (1), p 944, *ante*),

(3) to enable the managers or governors to defray the cost of providing a substituted school under section 15, p 113, *ante* (the expenses referred to relate to the balance of the cost after deducting any grant paid to the managers or governors under section 103, *ante*) and

(4) to enable the managers or governors to provide accommodation for displaced pupils (as defined in section 104 (2), p 244, *ante*) under section 98, *ante*

The object of the loans which may be made under this section is to place the denominations and voluntary managers in the same situation as local authorities find themselves in when borrowing to carry out public work

As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118 pp 266 and 267, *post*

(a) **"Managers or governors".**—See note (d) to section 17, p 122, *ante*

(b) **"Aided school"**.—See section 15, p 113, *ante*, and particularly note (c) to that section

(c) **"Special agreement school".**—See section 15, p 113, *ante*, and particularly note (d) to that section

(d) **"After consultation with persons representing them".**—In discussing this provision during the passage of the Bill, Mr Butler (President of the Board of Education) said in relation to this phrase —

> "The importance of these words is that in a loan of this character the committee will wish to be satisfied that the application and, indeed, the bargain is not a frivolous one, and therefore conditions will have to be laid down as the clause specifies We also trust that in the case of the denominations, we may bring in the diocesan authorities, particularly the Diocesan Finance Committee That will be some backing for the general view of the managers because if this loan were to be negotiated simply with the managers, there would be no screening of the loan by the diocesan organisation I have ascertained that both in the case of Roman Catholics and Anglicans they would be ready, so to speak, to rationalise their finances to that extent so that the loan could then be made with the additional comfort that the diocese is interesting itself in the transaction A further proposal which the Government have in mind is that these loans shall not be taken out for any sum below £500 in order, to some extent, to limit the scope of the loans"

(e) **"Initial expenses".**—This expression is defined in subsection (2) of this section

(f) **"School premises".**—*Section 114 (1), p 255, post, provides that the word "premises", in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house*

(g) **"And otherwise on such terms and conditions".**—The section does not specify how the loan is to be secured If it is secured upon the school premises the Minister would presumably find it necessary to take such steps as might be necessary to prevent the agreement from operating as a breach of trust

(h) **"Alterations".**—Section 114 (1), p 255, *post*, provides that in relation to any school premises this term includes any improvements or enlargements which do not amount to the establishment of a new school

(i) **"Development plan".**—As to the preparation, submission and approval of development plans, see section 11, p 103, *ante*

(k) **"Special agreement".**—See section 15, p 113, *ante*, and the Third Schedule, p 283, *post*

(l) **"Construction of any school".**—See section 103 (2), p 243, *ante*

(m) **"An order made under section sixteen of this Act".**—In addition to section 16, p 119, *ante*, see note (a) to section 103 p 244, *ante*

(n) **"Under the last foregoing section".**—See section 104, p 244, *ante*, which enables the Minister to make grants in respect of aided schools and special agreement schools established for the accommodation of displaced pupils

(o) **"Displaced pupils".**—This term is defined by section 104 (2) (*a*), p 244, *ante*

(p) **"Maintenance contribution".**—Section 114 (1), p 255, *post*, provides that in relation to any voluntary school this expression means a contribution payable under section 102, p 242 *ante*

(q) **"Grant under a special agreement".**—See paragraphs (4) and (5) of the Third Schedule p 283, *post*

(r) **"Grant under either of the last two foregoing sections".**—Sections 103 and 104, pp 243 and 244, *ante*, enable the Minister to make grants in respect of aided schools and special agreement schools which are —

(*a*) transferred to new sites or established in substitution for former schools, and

(*b*) established for the accommodation of displaced pupils

(s) **"Subsection (2) of section fifteen of this Act"**.—Section 15 (2), p 113, *ante*, enables the Minister (*inter alia*), where he is satisfied that the managers or governors of a voluntary school with respect to which application is duly made to him will be able and willing, with the assistance of the maintenance contribution payable under section 102, p 242, *ante*, to defray the expenses falling to be borne by them under section 15 (3) (*a*), p 113, *ante*, by order to direct that the school shall be an aided school, or, if a special agreement has been made with respect to the school under the Third Schedule, p 283, *post*, a special agreement school

(t) **"County school".**—See section 9 (2), p 100, *ante*

(u) **"Controlled school"**.—See section 15, p 113, *ante*

(x) **"Paragraph (a) of subsection (3) of that section".**—Section 15 (3) (*a*), p 113, *ante*, specifies the expenses for which the managers or governors of aided and special agreement schools are liable under the Act, i e, the cost of alterations to bring the school up to the prescribed standards, and the cost of external repairs See the notes to that section

(y) "**Local inquiry**".—As to the powers of the Minister in relation to the holding of local inquiries, see section 93, p. 229, *ante*.

106. Contributions between local education authorities.—(1) Where a local education authority (a) provide in any school maintained by the authority (b) for the primary or secondary education (c) of any child (d) or young person (e) who belongs to the area (f) of some other local education authority, then, if a claim therefor is made within the prescribed period (g), they shall, subject as hereinafter provided, be entitled to recover (h) from that authority such contributions as may be determined by agreement between the authorities concerned, or in default of such agreement by the Minister, to be equal to the cost of providing for the education :

Provided that if in the case of any child or young person the Minister is satisfied that there was no sufficient reason (i) why the education provided for him should not have been provided by the authority for the area to which he belongs, the Minister may, on the application of that authority, direct (k) that no contribution shall be recoverable in respect thereof under this subsection. [517]

(2) For the purposes of this section a child or young person shall be deemed to belong to the area in which his guardian resides (l) :

Provided that—

(*a*) if the guardian of the child or young person cannot be found or his guardian has no place of residence in England or Wales, the child or young person shall be deemed to belong to the area of the local education authority in whose area he was born ; and

(*b*) where immediately before the date of the commencement of Part II of this Act (m) a former authority (n) had been required under the Education (Institution Children) Act, 1923, to make payments to another former authority in respect of any child and was liable to make such payments, then, so long as the first-mentioned former authority would have remained so liable if that Act had not been repealed, the child shall be deemed to belong to the area of the local education authority responsible for the liabilities of the first-mentioned former authority. [518]

(3) If it is impracticable to determine under the provisions of the last foregoing subsection to what area a child or young person belongs, either because his place of birth was not in England or Wales or cannot be ascertained or for any other reason, he shall be treated as belonging to such area as may be determined by agreement between the local education authorities concerned, or in default of such agreement, by the Minister. [519]

(4) In this section the expression " guardian ", in relation to any child or young person, means the person having the legal right to the guardianship of the person of that child or young person :

Provided that where that person has been deprived of the custody of the child or young person by the order of a court of competent jurisdiction, the guardian of the child or young person shall be deemed to be the person appointed by that court to have the custody of him. [520]

(5) Nothing in this section shall be construed as preventing the payment by agreement between local education authorities of contributions in respect of education provided by one authority on behalf of another in cases where the authority by whom the education is provided is not entitled to recover contributions under this section (o). [521]

NOTES

This section replaces section 128 of the Education Act, 1921 ; 7 Halsbury's Statutes 198, which dealt with contribution orders in respect of border children, and makes provision generally for arrangements to be made for making the cost of the education of children who attend a school outside the area to which they belong. In so doing it also replaces section 127 of that Act; 7 Halsbury's Statutes 197, which provided for the making of contributions by boards of guardians (now, by the Tenth Schedule to the Local Government Act, 1929; 10 Halsbury's Statutes 995, councils of counties and county boroughs), and the Education (Institution Children) Act, 1923; 7 Halsbury's Statutes 227, which was passed as a result of the decision in *Gateshead Union* v. *Durham County Council* [1918] 1 Ch. 146 ; 19 Digest 553, 7.

(a) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Any school maintained by the authority".**—The word "school" is defined in general terms in section 114 (1), p. 255, *post*, but is subject in this section to the following qualifying words. By the same subsection, the word "maintain", in relation to a school, has the meaning assigned to it by subsection (2) of that section.

(c) **"Primary or secondary education".**—Section 114 (1), p. 255, *post*, provides that these terms have the meanings respectively assigned to them by section 8, p. 97, *ante*.

(d) **"Child".**—By section 114 (1), p. 255, *post*, this expression means a person who is not over compulsory school age, which, subject to the provisions of section 38, p 160, *ante*, is defined in section 35, p 155, *ante*. As to the attainment of any particular age, see section 114 (5), p. 258, *post*

(e) **"Young person".**—By section 114 (1), p. 255, *post*, this expression means a person over compulsory school age who has not attained the age of eighteen years. See also note (d), *ante*.

(f) **"Belongs to the area".**—Subsections (2) and (3) of this section explain this phrase.

(g) **"Within the prescribed period".**—Under the previous law claims for payment under the Education (Institution Children) Act, 1923, had to be made within two years from the end of the financial year during which the right to claim arose (section 1 (7) of that Act; 7 Halsbury's Statutes 728). This phrase now enables the Minister to prescribe a period within which claims must be made which will be applicable to all cases. By section 114 (1), p. 255, *post*, "prescribed" means prescribed by regulations made by the Minister, as to which see section 112, p. 254, *post*.

(h) **"Entitled to recover".**—Section 128 of the Education Act, 1921; 7 Halsbury's Statutes 198, and section 1 of the Education (Institution Children) Act, 1923; 7 Halsbury's Statutes 226, provided that any sums payable under either section might be recovered as debts due to the authority concerned or alternatively might be paid by the Board of Education and subsequently deducted from parliamentary grant. Under the present Act it is apparently deemed sufficient to provide for recovery in the usual manner, though once the amount of the contribution has been determined it apparently becomes the duty of the authority concerned to pay it and such a duty would, of course, be enforceable by the Minister under section 99, p. 237, *ante*. As to the proof of a determination of the Minister in proceedings for recovery under this section, see section 3, p. 86, *ante*.

(i) **"No sufficient reason".**—This proviso deals with cases where a local education authority, having provided an adequate education service of its own, is called upon by another local education authority to pay a contribution in respect of a child who has attended a school in the area of the other local education authority for no adequate reason. Difficulties have arisen in such cases in the past and if such a difficulty arises in the future the matter may be referred to the Minister for a direction.

(k) **"The Minister may, on the application of that authority direct".**—As to the revocation or variation of such directions, see section 111, p. 254, *post*.

(l) **"The area in which his guardian resides".**—As to the meaning of the word "guardian", see subsection (4) of this section. The word covers children who are resident in an institution or workhouse under the control of the poor law authority. Under section 44 (3) of the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 186, it was held in *Berkshire County Council* v. *Reading Corporation* [1921] 2 K.B. 787; 33 Digest 273, *1902*, that "residence" meant actual physical residence, namely, the place where a person eats, drinks and sleeps. Various other cases, decided under different enactments, deal with particular instances of this rule, including *R.* v. *Norwood* (1867), L.R. 2 Q.B. 457; 37 Digest 256, *505*; *R.* v. *Whitby Union* (1870), L.R. 5 Q.B. 325; 37 Digest 316, *1140*; *R.* v. *Abingdon Union* (1870), L.R. 5 Q.B. 406; 37 Digest 308, *1083*; *Fulham Union* v. *Isle of Thanet Union* (1881), 7 Q.B. 539, *37 Digest 314, 1124*, *Great Yarmouth Union* v. *Bethnal Green Union* (1907), 71 J.P. 422; 37 Digest 256, *506*; *Leicester Corporation* v. *Stoke-on-Trent Corporation* (1918), 17 L.G.R. 172; 19 Digest 578, *137*; and *Stoke on-Trent Borough Council* v. *Cheshire County Council* [1915] 3 K.B 699; 19 Digest 577, *135*.

(m) **"The date of the commencement of Part II of this Act".**—By section 119, p. 267, *post*, Part II of the Act comes into operation on 1st April, 1945.

(n) **"Former authority".**—By section 114 (1), p. 255, *post*, this term is defined as any authority which was a local education authority within the meaning of any enactment repealed by this Act or any former Act

(o) **"Not entitled to recover contributions under this section".**—This subsection enables arrangements to be made between one local education authority and another where a young person attends a county college in an area other than that in which he resides. Since, however, young persons will normally attend county colleges only in accordance with college attendance notices served under section 44, p. 172, *ante*, the college attended will normally be in the area in which the young person lives, unless some mutual arrangement is made between the local education authorities of adjoining areas. In such circumstances there is no need, as in the case of primary and secondary schools, to make provision for disagreements between neighbouring authorities

107. Expenses of Ministers.—Any expenses incurred by the Minister or by the Minister of Health in the exercise of their functions under this Act shall be defrayed out of monies provided by Parliament. [522]

NOTE

This section does not specifically replace any particular provision of the previous law, but section 118 of the Education Act, 1921; 7 Halsbury's Statutes 193, for example, which dealt with educational grants, provided that the grants to be made to local education authorities under that section should be paid out of moneys provided by Parliament, and the section therefore is a generalisation of that provision

PART V
SUPPLEMENTAL

108. Power to facilitate commencement of Part II.—(1) Without prejudice to any powers exercisable under section thirty-seven of the Interpretation Act, 1889 (a), the Minister may exercise, and may authorise or require (b) any local education authority (c), former authority (d), or other person or body of persons (e), to exercise during the period before the date on which Part II of this Act comes into operation (f) any functions, which will, on or after that date, become exercisable by him or them under any provision of this Act, in so far as the exercise of those functions during that period is, in his opinion, necessary or expedient for securing that that Part may be brought into operation without delay or for preventing difficulties in the operation of that Part after the date aforesaid. [523]

(2) The Minister shall, in exercise of the power conferred by the last foregoing subsection, constitute any joint education boards (g) and secure the constitution of any education committees (h) and sub-committees and of any divisional executives (i) which are, in his opinion, essential for the initial operation of the said Part II. [524]

(3) If the Minister is satisfied that it is necessary to make an order under this subsection by reason of time being required after the commencement of the said Part II for enabling adequate provision to be made for a supply of teachers or of school accommodation sufficient to meet the needs of children between the ages of fourteen and fifteen years, he may by order direct (k) that, while the order remains in force, section thirty-five of this Act (l) shall have effect as if for references therein to fifteen there were substituted references to fourteen and section forty-three of this Act (m) shall have effect as if for the reference therein to the date of the commencement of the said Part II there were substituted a reference to the date of the expiry of the order:

Provided that, if any order made under this subsection is still in operation at the expiration of the period of two years after the commencement of the said Part II, the order shall then cease to have effect. [525]

NOTES

This and the remaining sections of Part V of the Act came into operation immediately upon the passing of the Act, namely, 3rd August, 1944 (*section 119, p. 267, post*).

The section has only a temporary effect, since subsections (1) and (2) have no application after 31st March, 1945, the date on which, by section 119, *ante*, Part II of the Act comes into operation, and the maximum life of subsection (3) is two years from that date, but it is nevertheless a provision of the highest importance. The main object of the section is to enable the Minister to take, and to authorise the new local education authorities to take, such measures as appear to him necessary or expedient to facilitate the bringing into operation of Part II of the Act, including the constitution of joint education boards, education committees and divisional executives under Parts I, II and III of the First Schedule, p 271, *post*. In Ministry of Education Circular 1 (15th August, 1944) the Minister indicated that he regarded it as important that the new machinery of local administration for which section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*, provide should be set up so as to be ready to function by 1st April, 1945, when the new local education authorities would come into being. The subsidiary object of subsection (3) is to enable the Minister to postpone the raising of the school leaving age to fifteen years under section 35, p. 155, *ante*, for a period of not more than two years from 1st April, 1945, if it is not possible by that date to make provision for an adequate supply of teachers or of school accommodation to meet the needs of children between the ages of fourteen and fifteen years. In fact, on 17th August, 1944, the Minister made an order under this subsection entitled the Compulsory School Age (Postponement) Order, 1944, S.R. & O. 1944 No. 979, which provides as follows:—

"The Minister of Education in pursuance of the powers conferred on him by subsection (3) of section 108 of the Education Act, 1944 (hereinafter called 'the Act') and all other powers in that behalf enabling him hereby orders as follows:—

1. While this Order remains in force, section thirty five of the Act shall have effect as if for references therein to fifteen there were substituted references to fourteen, and section forty-three of the Act shall have effect as if for the reference therein to the date of the commencement of Part II of the Act there were substituted a reference to the date of the expiry of this Order.

2. Subject to the proviso to the said subsection, this Order shall expire with such date as may hereafter be specified by further Order of the Minister.

3. This Order may be cited as the Compulsory School Age (Postponement) Order, 1944.

Given under the Official Seal of the Minister of Education this 17th day of August, 1944.

(L.S.). *R. A. Butler*,
Minister of Education."

The intention to make this order was expressed in Ministry of Education Circular 1 (15th August, 1944) to local education authorities, so that they might take this into consideration in making the necessary preparations for the raising of the school leaving age, and the reason given was the impossibility of securing the necessary teachers and school accommodation by that date. The Circular also indicated that it was not possible at that stage to say how long the order would remain in force, but authorities might take it that it would not cease to have effect earlier than 1st April, 1946.

The Circular also indicated that, with the object of ensuring that the new machinery of local administration would be set up so as to be ready to function by 1st April, 1945, the Minister was about to communicate with those authorities to whose areas he proposed to apply the provisions of Part I of the First Schedule (Joint Education Boards). He also proposed, in exercise of the powers conferred on him by this section, to require those local education authorities to whom the provisions of Part III of the First Schedule would apply, to proceed with the preparation of schemes of divisional administration. For that purpose he undertook to inform local education authorities of those boroughs and urban districts which before 1st October, 1944, lodged with him claims to be excepted districts, and to consult with the local education authorities about the claims of those boroughs or urban districts which did not satisfy either of the conditions specified in (*a*) and (*b*) of paragraph 4 of Part III of the First Schedule, p. 276, *post*.

(a) **" Section thirty-seven of the Interpretation Act, 1889 ".**—This section provides as follows :—

> " Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

(b) **" May authorise or require ".**—If the Minister issues a requirement under this subsection it will become, in the case of a local education authority, a duty enforceable under section 99, p. 237, *ante*, for although, by section 119, p. 267, *post*, Part IV of the Act, including section 99, *ante*, does not come into force until 1st April, 1945, the Minister may, under this subsection, exercise his functions under that section before that date.

(c) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*.

(d) **" Former authority ".**—By section 114 (1), p. 255, *post*, this term means any authority which was a local education authority within the meaning of any enactment repealed by the Act or by any previous Act. It includes, in counties, not only local education authorities whose functions are transferred to county councils under the Act, but also the county councils themselves.

(e) **" Other person or body of persons ".**—Section 19 of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1001, provides that in that Act and in any Act passed after that Act the word " person ", unless the context otherwise requires, is to include any body of persons corporate or unincorporate. In those circumstances the use of the expression " or body of persons " is quite unnecessary, though it may have been introduced to emphasise the Minister's power, for example, to bring into consultation on some matters the Diocesan Education Committees and other similar bodies

(f) **" The date on which Part II of this Act comes into operation ".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p. 267, *post*).

(g) **" Joint education boards ".**—Part I, paragraph 1, of the First Schedule, p. 271, *post*, enables the Minister by order to constitute joint education boards for the areas of two or more councils to whom, by paragraph 5 thereof, that Part of the Schedule applies, and to direct that the board shall be the local education authority for the areas concerned. As to the Minister's intentions on this point, see the general note to this section.

(h) **" Education committees ".**—Part II of the First Schedule, p. 273, *post*, makes provision for the establishment of education committees of a local education authority, and paragraph 3, in particular, enables the Minister by order to establish a joint education committee of two or more local education authorities for the purpose of exercising some of their functions with respect to education. Furthermore, paragraph 1 of Part II of the Schedule requires every local education authority to establish, in accordance with arrangements approved by the Minister, such education committees as it thinks it expedient to establish for the efficient discharge of its functions Although the exercise of this duty is contingent upon the opinion of the authority, the powers of the Minister under section 68, p. 205, *ante*, and the necessity of obtaining his approval to the proposed arrangements, will enable the Minister to require the establishment of education committees before 1st April, 1945, if he thinks it expedient and reasonable to do so.

(i) **" Divisional executives ".**—Part III of the First Schedule, p. 275, *post*, which, by paragraph 1, applies only to local education authorities of counties, requires them to make schemes of divisional administration and for that purpose to constitute bodies of persons to be known as divisional executives and, though paragraph 3 thereof requires them to make such schemes " as soon as may be " after 1st April, 1945, the Minister may, in exercise of his powers under section 99, p 237, *ante*, and this section, require schemes to be formulated, if he thinks it expedient, before that date. In fact the Minister does so intend—see the general note to this section.

(k) **" He may by order direct ".**—As to the revocation or variation of orders and directions, see section 111, p. 254, *post*.

(l) **" Section thirty-five of this Act ".**—Section 35, p. 155, *ante*, defines the term " compulsory school age " for the purposes of the Act, and provides that, subject to section 38, p. 160, *ante*, and this section, the school-leaving age is to be raised to fifteen years on 1st April, 1945,

and as soon as practicable thereafter to sixteen years See, as to the Compulsory School Age (Postponement) Order, 1944, S R & O 1944 No 979, the general note to this section

(m) **"Section forty-three of this Act"**.—Section 43, p 171 *ante*, provides for the establishment and maintenance of county colleges The duty of establishing county colleges is to apply on and after a date to be fixed by Order in Council and subsection 43 (1), *ante*, provides that this order is to be made not later than three years after the date of the commencement of Part II of the Act If, however, an order is made under subsection (3) of this section the period of three years will not commence to run until the date of expiry of the order Having regard to the Compulsory School Age (Postponement) Order, 1944, S R & O 1944 No 979, and the intention of the Minister as to its life (expressed in Circular 1, referred to in the general note to this section) it is unlikely that the period will commence to run before 1st April, 1946

109. Power of Minister to authorise local education authorities to provide temporary assistance for voluntary schools.—If upon representations made to him (a) by any local education authority (b) the Minister is satisfied that by reason of difficulties arising out of war conditions or out of conditions occasioned by the coming into operation of Part II of this Act (c) temporary accommodation (d) for children (e) who are, or whose parents (f) desire them to be, registered pupils (g) at any voluntary school (h) is required until permanent accommodation (i) can be provided for them by the managers or governors (k) in accordance with the development plan for the area (l), the Minister may authorise (m) the local education authority to provide, or assist in providing, such temporary accommodation in accordance with arrangements approved by him, so, however, that any such authorisation shall be withdrawn as soon as there has, in the opinion of the Minister, been sufficient opportunity for permanent accommodation for such pupils to be provided by the managers or governors of the school **[526]**

NOTES

This section, which is, of course, entirely new law, enables the Minister to authorise local education authorities to provide temporary assistance for voluntary schools It is intended to cover situations which have arisen as a result of the war, whether by reason of war damage, the use of school premises for other purposes or of the transfer of population, or which will arise as the various provisions of the Act come into operation As the various stages contemplated by the Act are reached it may, owing to the shortage of building labour and materials or for a variety of other reasons, be quite impossible for the managers or governors of a voluntary school to carry out immediately the alterations which they would ultimately be required to make under the Act to bring the school up to the prescribed standards In order to bridge this difficult period and to prevent the discontinuance of voluntary schools whose managers or governors might otherwise be compelled to close them or hand them over by force of circumstances to the local education authority, this section has been included

(a) **"Upon representations made to him"**.—It will be noted that use may only be made of this section if the local education authority makes representations to the Minister to that effect In other words, even though the arrangements must be authorised by the Minister, the managers or governors of a voluntary school requiring assistance must first persuade the local education authority to submit proposals to the Minister The managers or governors are therefore entirely in the hands of the local education authority and, since section 68, p 205, *ante*, only enables the Minister to intervene where the authority has acted, or proposes to act, unreasonably, and not where the authority does not propose to act at all, there is no remedy available in the event of a refusal to assist It is, however, possible that the Minister would regard a refusal to make representations under this section as a failure by the local education authority to comply with the general duty imposed by section 8 (1), p 97, *ante*, of securing that sufficient schools for providing primary and secondary education are available for the area of the authority

(b) **"Local education authority"**.—See section 6, p 87, *ante*, and the First Schedule p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *post*

(c) **"The coming into operation of Part II of this Act"**.—Part II of the Act comes into operation on 1st April 1945 (section 119, p 267, *post*)

(d) **"Temporary accommodation"**.—The Act makes no attempt to specify the nature of such temporary accommodation which must of necessity vary widely according to circumstances There is no reason to assume that the Minister would not, in suitable conditions, approve the use of accommodation in existing buildings rented or acquired by the local education authority for the purpose or in temporary buildings erected by the local education authority on land made available for the purpose Presumably, however, the section is intended to enable the local education authority to provide, or assist in providing, the accommodation in circumstances in which the managers or governors would be unable to do so For example it may be that until the Emergency Powers (Defence) Act, 1939, ceases to be in force the requisitioning powers of local authorities may be extended to cover the requisitioning of land and buildings for the purposes of the section It is most desirable that the Minister should, at an early date, indicate the methods by which he proposes that use should be made of the powers given by this section and, in general terms, the types of arrangements which he would be prepared to approve

(e) **"Children"**.—By section 114 (1), p 255, *post*, the expression "child" is defined as a person who is not over compulsory school age so that, although provision is to be made by section 8 p 97, *ante*, for providing secondary education for senior pupils (who may include persons up to the age of nineteen years), assistance which may be given under this section is limited to the amount of accommodation necessary to provide for children up to the upper limit of compulsory school age only

(f) **"Parents".**—By section 114 (1), p 255, *post*, the word "parent", in relation (*inter alia*) to any child, includes a guardian and every person who has the actual custody of the child or young person

(g) **"Registered pupils".**—Section 114 (1), p 255, *post*, provides (*inter alia*) that the word "pupil", where used without qualification, means a person of any age for whom education is required to be provided under the Act, and also defines the more particular term here used, *i e*, "registered pupil", when used in relation to any school, as a pupil registered as such in the register kept in accordance with the requirements of the Act, but excludes any child who has been withdrawn from the school in the prescribed manner

(h) **"Voluntary school".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p 113, *ante*

(i) **"Permanent accommodation".**—The section does not attempt to define this expression, though in strictness it cannot but be a misnomer The meaning of the expression *must, therefore, be considered in* its relation to the expression "temporary accommodation" used elsewhere in the section and to the qualifying phrase "in accordance with the development plan for the area"

(k) **"Managers or governors".**—See note (d) to section 17, p 122, *ante*

(l) **"Development plan for the area".**—As to the preparation of the development plan for the area of every local education authority, see section 11, p 103, *ante*, and as to the subsequent making by the Minister of a local education order imposing duties upon the authority for the purpose of giving effect to the plan, see section 12, p 107, *ante*

(m) **"The Minister may authorise".**—It should be noticed that this section only permits the Minister to authorise a local education authority to provide, or assist in providing, temporary accommodation, and cannot by itself impose any duty upon the authority See, however, note (a), *supra* Withdrawal by the Minister of an authorisation under the section will mean that if the authority continues to provide, or assist in providing, accommodation after the date of withdrawal it will be making the provision without statutory sanction and such continued provision or assistance will constitute an *ultra vires* act See Local Government Law and Administration, Vol 13, Title '*Ultra Vires*", pp 259–286

110. Power of Minister to adjust variations of rates consequent upon commencement of Part II.—If it appears to the Minister that the transfer by this Act to the local education authority for any county (a) of functions formerly exercisable by the council of any county district (b) is likely to bring about in the county excessive variations in the incidence of rates during the period immediately following the commencement of Part II of this Act (c), he shall, if application is made to him in that behalf either by the local education authority or by any such council, cause an investigation to be made in accordance with the provisions of Part I of the Seventh Schedule to this Act (d), and, subject to the provisions of Part II of that Schedule (e), may make an order for the county (f) under the powers thereby conferred [527]

NOTES

The object of this section which, with the associated Seventh Schedule p 288, *post*, has only a temporary and limited application, is to soften somewhat the blow which ratepayers in the area of a Part III authority would otherwise have to bear in the case of the transfer of the functions of a Part III authority to the county council where the elementary education rate levied in the respective areas has hitherto differed considerably in amount The operation of these provisions is considered in detail in the notes to the Seventh Schedule, *post*

(a) **"Local education authority for any county".**—As to the local education authorities for the purposes of the Act, see section 6, p 87, *ante*, and the First Schedule, p 271, *post* The term 'county" is defined by section 114 (1), p 255, *post*, as an administrative county within the meaning of the Local Government Act, 1933, 26 Halsbury's Statutes 295 Sections 117 and 118, pp 266 and 267, *post*, provide for the application of the Act to London and the Isles of Scilly respectively, though in the case of London no question can arise under this section

(b) **"Functions formerly exercisable by the council of any county district".**—Section 3 of the Education Act, 1921, 7 Halsbury's Statutes 131, formerly provided (*inter alia*) that the councils of boroughs and urban districts with populations, according to the 1901 census, of over 10,000 and over 20 000 respectively should be local education authorities for elementary education All the functions of such authorities are transferred on 1st April, 1945, to the new local education authorities under the Act which, in this instance, are the local education authorities for counties Section 3 (2) of the Act of 1921, 7 Halsbury's Statutes 131, also provided that the local education authorities for higher education should be the county and county borough councils and, in addition, that the councils of non county boroughs and urban districts, though not local education authorities for higher education, should have the higher education powers given under the Act (as to which see section 70 (2) thereof, 7 Halsbury's Statutes 168, as amended by section 75 of the Local Government Act, 1929, 10 Halsbury's Statutes 932) These functions also are transferred to the county council by the Act, and it would appear by this section that any rate formerly levied in county districts for those purposes is to be taken into account in considering whether the transfer of functions is likely to bring about excessive variations in the incidence of rates In the case of a county district which was not also a local education authority for elementary education no question can arise owing to the limitation of expenditure to the produce of a rate of 1½d, but it might have an appreciable effect in the case of elementary education authorities The Seventh Schedule, p 288, *post*, however, only refers to expenditure incurred in connection with elementary education and it would therefore appear that no account is to be taken of expenditure incurred on higher education under section 70 (2) of the Education Act, 1921, 7 Halsbury's Statutes 168

(c) **"The commencement of Part II of this Act".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p 267, *post*)

(d) **" Part I of the Seventh Schedule to this Act ".**—See p. 288, *post.*
(e) **" Part II of that Schedule ".**—See pp. 288-9, *post.*
(f) **" May make an order for the county ".**—As to the revocation or variation of such an order, see section 111, p. 254, *post.*

111. Revocation and variation of orders and directions.—Any order made or directions given by the Minister, the Minister of Health or a local education authority (a) under the provisions of this Act may be varied or revoked by a further order or further directions made or given by the Minister, the Minister of Health, or that authority, as the case may be :

Provided that where the power to make or give any such order or directions is exercisable only upon the application or with the consent of any person or body of persons (b), or after consultation with any person or body of persons or otherwise subject to any conditions, no order or directions made or given thereunder shall be varied or revoked except upon the like application, with the like consent, after the like consultation or subject to the like conditions, as the case may be. [528]

NOTES

This section gives a general power to revoke or vary an order made or directions given under the Act by the Ministers of Education or Health or by local education authorities. Specific powers in the Act to make orders or give directions are very numerous and take several forms, *e.g.*, simply to order that a thing shall be done or to give directions to a person or body or, as in some cases the Minister is authorised, by order to direct.

(a) **" Local education authority ".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post.* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post.*

(b) **" Any person or body of persons ".**—See note (c) to section 108, p. 250, *ante.*

112. Regulations to be laid before Parliament.—All regulations made under this Act shall be laid before Parliament as soon as may be after they are made, and if either House of Parliament, within the period of forty days beginning with the day on which any such regulations are laid before it, resolves that the regulations be annulled the regulations shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of any new regulations.

In reckoning any such period of forty days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [529]

NOTES

Section 118 (5) of the Education Act, 1921 ; 7 Halsbury's Statutes 194, provided that any grant regulations made by the Board of Education should be laid before Parliament as soon as might be after they were made. Similar requirements were incorporated in other provisions of the Education Acts which authorised the making of regulations by a Ministerial Department. The present section replaces these provisions and enables any regulations made under the Act to be annulled by a positive resolution of either House of Parliament dring the period when the regulations are laid before them.

It should also be noted that by section 121, p. 270, *post*, any regulation in force under any enactment repealed by the Act is to continue in operation and have effect as if made under this Act and may be varied or revoked accordingly.

The present section may be compared with section 299 of the Local Government Act, 1933 ; 26 Halsbury's Statutes 464, wherein the period during which regulations made under that Act are to be laid before Parliament is thirty days.

113. Notices.—Any notice required or authorised by this Act to be served upon any person (a) may be served by delivering it to that person, or by leaving it at his usual or last known place of residence (b), or by sending it in a pre-paid letter addressed to him at that place. [530]

NOTES

This section replaces subsection (1) of section 158 of the Education Act, 1921 ; 7 Halsbury's Statutes 208, which enabled any notice or other document required by or under the Act to be served or sent by post unless the contrary was expressly provided and that a notice or document might be served on or sent to a local education authority by giving it to the clerk of the authority or by sending it to, or delivering it at, the offices of the authority.

Section 158 (2) of the Act of 1921 ; 7 Halsbury's Statutes 208, which dealt with the service of notices on local education authorities, has been replaced by section 286 of the Local Government Act, 1933 ; 26 Halsbury's Statutes 457.

Reference may be made, in connection with this section, to section 26 of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1002, which provides that where an Act passed after the commencement of that Act authorises or requires any document to be served by post, whether

the expression " serve ", or the expression " give " or " send ", or any other expression is used, *then, unless the contrary intention appears, the service shall be deemed to be effected* by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

It was decided in *Walthamstow U.D.C.* v. *Henwood* [1897] 1 Ch. 41 ; 22 Digest 370, *3785*, that prepayment of the letter must be proved in order to prove service. It has also been held *(R. v Westminster Union Assessment Committee, Ex parte Woodward & Sons [1917] 1* K.B. *832* ; 22 Digest 370, *3784*) that the presumption that a notice has been received when properly addressed, prepaid and delivered to the post office is not merely a presumption of fact unless the contrary is shown, but is a presumption of law whether in fact the notice was received by the addressee or not.

The service of notices for various purposes is authorised or required by numerous provisions of the Act.

(a) **" Any person ".**—Section 19 of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1001, provides that in any Act passed after the commencement of that Act the word " person ", unless the contrary expressly appears, includes any body of persons corporate or unincorporate It therefore includes local education authorities but in this connection regard must also be had to section 286 of the Local Government Act, 1933 ; 26 Halsbury's Statutes 457, which deals with the services of notices under *(inter alia)* any enactment passed after the commencement of that Act upon local authorities as defined in that Act and upon parish meetings.

(b) **" Usual or last-known place of residence ".**—As to the meaning of the word " residence ", see *Blackwell* v. *England* (1857), 27 L.J. (Q.B.) 124 ; 7 Digest 92, *532* ; *R.* v. *Brauthwaite* [1918] 2 K.B 319 , 33 Digest 330, *432* ; and *R.* v. *Hastings Justices, Ex parte Mitchell* (1925), 89 J.P. Jo. 86 ; 33 Digest 330, *432*.

114. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings herebv respectively assigned to them, that is to say :—

" Agreed syllabus " means, subject to the provisions of subsection (4) of this section, an agreed syllabus of religious instruction (a) prepared in accordance with the provisions of the Fifth Schedule to this Act (b) and adopted or deemed to be adopted (c) thereunder ;

" Alterations ", in relation to any school premises (d), includes any improvements or enlargements which do not amount to the establishment of a new school (e) ;

" Assist ", in relation to any school, college or institution, (f), has the meaning assigned to it by subsection (2) of this section ;

" Child " means a person who is not over compulsory school age (g) ;

" Clothing " (h) includes boots and other footwear ;

" Compulsory school age " (i) has, subject to the provisions of section thirty-eight of this Act, the meaning assigned to it by section thirty-five of this Act ;

" County " means an administrative county within the meaning of the Local Government Act, 1933 (j) ;

" Former authority " means any authority which was a local education authority (k) within the meaning of any enactment repealed by this Act or any previous Act ;

" Foundation managers " (l) and " foundation governors " mean, in relation to any voluntary school (m), managers and governors (n) appointed otherwise than by a local education authority (o) or a minor authority (p) for the purpose of securing, so far as is practicable, that the character of the school as a voluntary school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating thereto (q) ; and, unless the context otherwise requires, references in this Act to " managers " or " governors " shall, in relation to any function thereby conferred or imposed exclusively (r) on foundation managers or foundation governors, be construed as references to such managers or governors ;

" Further education " (s) has the meaning assigned to it by section forty-one of this Act ;

" Independent school " (t) means any school (u) at which full-time education (v) is provided for five or more pupils (w) of compulsory school age (x) (whether or not such education is also provided for pupils under or over that age), not being a school maintained (y)

by a local education authority (z) or a school in respect of which grants are made by the Minister (a^1) to the proprietor (b^1) of the school ;

" Junior pupil " means a child (c^1) who has not attained the age of twelve years (d^1) ;

" Local education authority " (e^1) means, in relation to any area for which a joint education board is constituted as the local education authority under the provisions of Part I of the First Schedule to this Act, the board so constituted, and, save as aforesaid, means, in relation to a county (f^1), the council of the county, and, in relation to a county borough, the council of the county borough ;

" Local education order " (g^1) means an order made by the Minister under section twelve of this Act ;

" Local government elector " has the meaning assigned to it by section three hundred and five of the Local Government Act, 1933 (h^1) ; and in relation to the area of any joint education board constituted under Part I of the First Schedule to this Act (i^1) a local government elector for the area of any council by whom members are appointed to the board shall be deemed to be a local government elector for the area of the authority ;

" Maintain " in relation to any school or county college (j^1) has the meaning assigned to it by subsection (2) of this section ;

" Maintenance contribution ", in relation to any voluntary school (k^1), means a contribution payable under section one hundred and two of this Act (l^1) ;

" Medical inspection " (m^1) means inspection by or under the directions of a medical officer (n^1) of a local education authority or by a person registered under the Dentists Act, 1878, employed or engaged, whether regularly or for the purposes of any particular case, by a local education authority ;

" Medical officer " means, in relation to any local education authority, a duly qualified medical practitioner (o^1) employed, or engaged, whether regularly or for the purposes of any particular case, by that authority ;

" Medical treatment " (p^1) includes treatment by any duly qualified medical practitioner or by any person registered under the Dentists Act, 1878, but does not, in relation to any pupil (q^1) other than a pupil receiving primary or secondary education (r^1) otherwise than at school (s^1) under arrangements made by a local education authority, include treatment in that pupil's home ;

" Minor authority " (t^1) means, in relation to any school maintained by the local education authority (u^1) for a county (v^1), the council of any borough (other than a county borough) or urban district or rural parish which appears to the local education authority to be the area served by the school, so, however, that where it appears to the local education authority that the area served by the school is a rural parish which has no parish council, the parish meeting of that parish shall be the minor authority, and where it appears to the local education authority that a school serves the area of two or more minor authorities that expression shall be construed as referring to all those minor authorities acting jointly (w^1) ;

" Parent " (x^1), in relation to any child or young person (y^1), includes a guardian and every person who has the actual custody of the child or young person ;

" Premises " (z^1), in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house ;

" Prescribed " (a^2) means prescribed by regulations made by the Minister ;

" Primary education " (b^2) has the meaning assigned to it by section eight of this Act ;

" Primary school " (c^2) means, subject to the provisions of subsection (3) of this section, a school for providing primary education ;

" Proprietor " (d^2), in relation to any school, means the person or body of persons responsible for the management of the school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools (e^2), includes any person or body of persons proposing to be so responsible ;

" Provisionally registered school " (f^2) means an independent school registered in the register of independent schools, whereof the registration is provisional only ;

" Pupil " (g^2), where used without qualification, means a person of any age for whom education is required to be provided under this Act ;

" Registered pupil " (h^2) means, in relation to any school, a pupil registered as such in the register kept in accordance with the requirements of this Act, but does not include any child who has been withdrawn from the school in the prescribed manner ;

" Registered school " (i^2) means an independent school registered in the register of independent schools, whereof the registration is final ;

" School " (j^2) means an institution for providing primary or secondary education (k^2) or both primary and secondary education (l^2), being a school maintained by a local education authority (m^2), an independent school (n^2), or a school in respect of which grants are made by the Minister to the proprietor of the school (o^2) ; and, the expression " school " where used without qualification includes any such school or all such schools as the context may require ;

" Secondary education " (p^2) has the meaning assigned to it by section eight of this Act ;

" Secondary school " (q^2) means, subject to the provisions of subsection (3) of this section, a school for providing secondary education ;

" Senior pupil " (r^2) means a person who has attained the age of twelve years but has not attained the age of nineteen years ;

" Special agreement " (s^2) means an agreement made under the provisions of the Third Schedule to this Act ;

" Special educational treatment " (t^2) has the meaning assigned to it by paragraph (*c*) of subsection (2) of section eight of this Act ;

" Trust deed " (u^2), in relation to any voluntary school (v^2), includes any instrument (not being an instrument of management, instrument of government (w^2), rules of management, or articles of government (x^2), made under this Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors (y^2) thereof ;

" Young person " (z^2) means a person over compulsory school age who has not attained the age of eighteen years. [531]

(2) For the purposes of this Act :—

(*a*) the duty of a local education authority (a^3) to maintain a school or county college shall include the duty of defraying all the expenses of maintaining the school or college except, in the case of an aided school or a special agreement school (b^3), any expenses that by virtue of any provision of this Act or of any special agreement (c^3) made thereunder are payable by the managers or governors (d^3) of the school, and the expression " maintain " shall be construed accordingly ; and

(*b*) where a local education authority make to the proprietor of any school which is not maintained by the authority or to the persons responsible for the maintenance of any training college or other institution which is not so maintained, any grant in respect

of the school college or institution or any payment in consideration of the provision of educational facilities thereat, the school college or institution shall be deemed to be assisted (e[3]) by the authority. [532]

(3) So long as any county school or voluntary school is used for providing both primary and secondary education, references in this Act to primary schools (f[3]) shall be construed as including references to that school and references therein to secondary schools shall be construed as excluding any reference thereto :

Provided that where the primary education provided in any such school is provided in a separate junior or preparatory department, the Minister may direct (g[3]) that the school shall be deemed for the purposes of this Act to be a secondary school and such references as aforesaid shall be construed accordingly. [533]

(4) Where before the date of the commencement of Part II of this Act (h[3]) a syllabus of religious instruction had been adopted by a former authority (i[3]) for use in any school which after that date is a county school or a voluntary school or for any class or description of pupils, that syllabus shall be deemed to be the agreed syllabus (j[3]) for that school, or for that class or that description of pupils, as the case may be, until a syllabus in substitution therefor is prepared in accordance with the provisions of the Fifth Schedule to this Act (k[3]) and adopted or deemed to be adopted thereunder, or until the expiration of two years after the said date, whichever first occurs. [534]

(5) For the purposes of this Act, a person in attendance at a school or county college who attains any age during the term of the school or college shall be deemed not to have attained that age until the end of the term (l[3]). [535]

(6) Any person who before the commencement of Part II of this Act had attained an age at which his parent had ceased to be under any obligation imposed under section forty-six of the Education Act, 1921 (m[3]), shall be deemed to be over compulsory school age, and any person who after the said date ceases to be of compulsory school age (n[3]) shall not, in the event of any subsequent change in the upper limit of the compulsory school age, again become a person of compulsory school age. [536]

(7) Where at any time before the date of the commencement of Part II of this Act the premises of any school which was for the time being a public elementary school within the meaning of the enactments repealed by this Act (o[3]) have ceased by reason of war damage (p[3]), or by reason of any action taken in contemplation or in consequence of war, to be used for the purposes of a school, then, for the purposes of this Act, the school, unless it has been closed in accordance with those enactments (q[3]), shall be deemed to have been a public elementary school within the meaning of those enactments immediately before that date and, if it was maintained by a former authority immediately before the premises ceased to be used for the purposes of a school, to have been maintained by such an authority immediately before that date. [537]

(8) In this Act, unless the context otherwise requires, references to any enactment (r[3]) or any provision of any enactment shall be construed as references to that enactment or provision as amended by any subsequent enactment, including this Act. [538]

NOTES

This section replaces section 170 of the Education Act, 1921; 7 Halsbury Statutes 212, although the terms which are specially defined in this section for the purposes of this Act differ considerably from those in the above-mentioned provision of the Act of 1921.

As to the effect of an interpretation clause in a statute, see *R. v. Cambridgeshire Justices* (1838), 7 Ad. and El. 480 ; 42 Digest 679, *911* (remarks of Lord Denman, C.J., at p. 491) ; and *A.-G. v. Worcester Corporation* (1846), 15 L.J. Ch. 398 ; 42 Digest 679, *906* (remarks of Lord Cottenham, L.C., at p. 399). Pollock, C.B., in *Alisopp v. Day* (1861), 7 H. and N. 457, at p. 463 ; 42 Digest 640, *440*, stated that an interpretation clause ought to be strictly construed. As to the application of definitions to incorporated enactments, see *Sale v. Phillips* [1894] 1 Q.B. 349 ; 38 Digest 227, *681*.

(a) **" Agreed syllabus of religious instruction ".**—Section 29 (1), p. 146, *ante*, provides that the provisions of the Fifth Schedule, p. 286, *post*, are to have effect with respect to the preparation, adoption, and reconsideration of an agreed syllabus of religious instruction. The remainder of that section enables a local education authority to constitute a standing advisory council on religious education to advise the authority upon matters connected with the religious instruction to be given in accordance with an agreed syllabus, including methods of teaching, choice of books and the provision of lectures for teachers. Section 26, p. 142, *ante*, provides that the religious instruction to be given in county schools is, subject to an exception in cases where arrangements cannot conveniently be made for withdrawal of pupils under the Act, to receive religious instruction elsewhere, to be given in accordance with an agreed syllabus. Subject to the exceptions contained in section 27 (1), p. 143, *ante*, the religious instruction to be given in controlled schools is, by subsection (6) of that section, also to be in accordance with an agreed syllabus. In the case of aided and special agreement schools the religious instruction is normally to be under the control of the managers or governors and to be in accordance with the provisions of the trust deed or of previous practice, but even in those schools arrangements are to be made to enable pupils whose parents so desire and who cannot reasonably attend elsewhere to receive religious instruction in accordance with an agreed syllabus.

Subsection (4) of this section provides for the temporary continuance of syllabuses adopted before 1st April, 1945, by a former authority as agreed syllabuses under this Act until a new syllabus can be adopted under the Act, which must be within two years.

(b) **Fifth Schedule to this Act ".**—See p 286, *post*, which details the procedure to be adopted in relation to the preparation and adoption of an agreed syllabus. On the committee stage of the Bill in the House of Commons, the point was raised whether it would be necessary to set up a committee in every case or whether the syllabus already in existence, if accepted by all parties and agreed by the Minister, might be continued without the setting-up of a committee. In reply the Parliamentary Secretary to the Board of Education referred to the fact that most of the agreed syllabuses then in use provided for the old school-leaving age of fourteen, whereas the Bill provided for instruction to be given not merely in elementary, but in secondary, schools, which would include pupils up to eighteen or nineteen years of age. Accordingly, most of the existing agreed syllabuses would need substantial revision if they were to be made suitable for that wider age range. He thought it would be possible, however, for a local education authority to call its committees together and for those committees, instead of going through the processes of constructing their own syllabus, to accept one of the existing syllabuses, such as the Cambridge syllabus, known to have some standing. He called attention, however, to the fact that none of the then existing syllabuses, as far he knew, had been designed for dealing with the school age range of the secondary school.

(c) **" Adopted or deemed to be adopted ".**—In order that a syllabus may be adopted it is necessary for the committees set up under paragraph 2 of the Fifth Schedule, p. 286, *post*, to reach unanimous agreement (paragraph 9, *ibid*). In the event of failure to reach unanimous agreement, or of failure by a local education authority to adopt a syllabus unanimously recommended to it, the Minister is to appoint a body of persons to prepare a syllabus (paragraph 10, *ibid.*) which, as from a date directed by the Minister, will be deemed to be the agreed syllabus (paragraph 11, *ibid.*). See also paragraph 12, *ibid.*, as to the reconsideration of an agreed syllabus. A syllabus may also be deemed temporarily to be an agreed syllabus under subsection (4) of this section.

(d) **" School premises ".**—The word " premises ", in relation to any school, as well as " school " itself, is defined in this section.

(e) **" The establishment of a new school ".**—The importance of the definition of the expression " alterations " lies in the fact that a special procedure has to be followed under section 13, p. 109, *ante*, in the case of the establishment of a new school, whereas this does not apply in the case of alterations to premises already existing. It should, however, be noted that the development plan to be prepared by each local education authority under section 11, p. 103, *ante*, is to specify what alterations are required by the Act or by regulations made thereunder in the premises of any school proposed to be either a county school or a voluntary school.

(f) **" School, college or institution ".**—The word " school " is defined by this section. The words " college or institution " will cover all types of educational institution referred to in the Act, including county colleges (section 43, p. 171, *ante*) and teachers' training colleges (section 63, p. 200, *ante*), except schools. See note (1) to section 47, p. 178, *ante*, and note (e) to section 77, p. 213, *ante*.

(g) **" Compulsory school age ".**—According to this section, this term has, subject to the provisions of section 38, p. 160, *ante*, the meaning assigned to it by section 35, p. 155, *ante*. It should be noted that the word " child " includes persons who are below the lower limit of compulsory school age and, indeed, this is essential in the circumstances in which the word is used in several sections of the Act, *e.g.*, sections 9 (4), p. 100, *ante* (definition of nursery schools), 34, p. 154, *ante* (ascertainment of children who require special educational treatment) and 57, p. 192, *ante* (duty to report to local authority under the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 160). As to the date on which a person ceases to be of compulsory school age, see subsections (5) and (6) of this section. The word " child " was defined for the purposes of the Education Acts, 1921–1939, by section 170 (13) of the Act of 1921; 7 Halsbury's Statutes 213. As to the altered meaning of the word " child " when used in any enactment relating to the prohibition or regulation of the employment of children or young persons, see section 58, p. 194, *ante*.

(h) **" Clothing ".**—As to the provision of clothing for pupils at schools maintained by local education authorities, and the recovery of the cost thereof, see, respectively, sections 51 and 52, pp. 185 and 186, *ante*. See also section 53 (3), p. 187, *ante*, with regard to the provision of clothing suitable for the physical training provided in accordance with that section at schools and county colleges maintained by the local education authority.

(i) **" Compulsory school age ".**—This is purely a declaratory definition, the real meaning of the term being contained in sections 35 and 38, pp. 155 and 160, *ante*. As to the date on which a person ceases to be of compulsory school age, see subsections (5) and (6) of this section.

(j) **" An administrative county within the meaning of the Local Government Act, 1933 ".**—Section 1 (1) of the Local Government Act, 1933; 26 Halsbury's Statutes 306, provides (*inter alia*) that for the purposes of local government England and Wales (exclusive of London) is to be divided into administrative counties and county boroughs, whilst subsection (2) of the same section, *ibid.*, states (*inter alia*) that, subject to any alteration of boundaries

or the constitution of new authorities taking effect after the passing of that Act, the administrative counties are to be those named in Part I of the First Schedule thereto, 26 Halsbury's Statutes 470 Part I of that Schedule names a total of sixty three counties, forty nine of which are in England and the remaining twelve in Wales For the purposes of that Act London, though excluded from the list of administrative counties, is defined by section 305, 26 Halsbury's Statutes 465, as *the administrative county of London* As regards the application of this Act to London section 117 (4) p 266, *post*, provides (*inter alia*) that for the purposes of the application of this section to the local education authority for the county of London the reference in this definition to the Local Government Act, 1933, shall be construed as a reference to the London Government Act, 1939, and section 206 of that Act, 32 Halsbury's Statutes 250, provides (*inter alia*) that the word "county" as used in that Act means the administrative county of London

As regards the Isles of Scilly, section 118, p 267, *post*, requires the Minister to provide by order for the application thereto of the Act as if those islands were a separate county

(k) **"Any authority which was a local education authority".**—Section 3 (1) of the Education Act, 1921, 7 Halsbury's Statutes 131, provided that for the purposes of elementary education —

"(*a*) the council of every county borough as respects their county borough,

(*b*) the council of a borough with a population of over ten thousand according to the census of nineteen hundred and one as respects their borough,

(*c*) the council of an urban district with a population of over twenty thousand according to that census as respects their district, and

(*d*) the council of every county as respects their county (excluding the area of any such borough or urban district)"

should be the local education authority

By the Education (Local Authorities) Act, 1931, 24 Halsbury's Statutes 173, the words "excluding the area of any urban district (whether a borough or not) whereof the council is a local education authority for the purposes of elementary education" were substituted for the bracketed words in paragraph (*d*) of section 3 (1), *ibid* As to the effect of the Act of 1931, see the notes to section 6, p 87, *ante*

Section 3 (2) of the Act of 1921, 7 Halsbury's Statutes 131, provided that for the purposes of higher education —

"(*a*) the council of a county as respects their county, and

(*b*) the council of a county borough as respects their borough",

should be the local education authority, but the councils of non county boroughs and urban districts, though not local education authorities for higher education, had the powers as respects higher education given by that Act (in particular section 70 thereof)

From this latter definition it appears that councils of non-county boroughs and urban districts (whether or not local education authorities for elementary education under that Act) were not local education authorities for higher education and when exercising their powers under section 70 thereof, 7 Halsbury's Statutes 168, did not act as such In that respect, therefore, they are not former authorities under this Act and it is at least questionable whether, for instance, the provisions of section 96, p 231, *ante*, apply to enable adjustments to be made in relation to officers, property, etc, employed or used for purposes of higher education though it is clear from subsections (3) and (4) of section 6, p 87, *ante*, that such officers and property are transferred to the local education authority under this Act. See the notes to those sections

Section 5 of the Education Act, 1921, 7 Halsbury's Statutes 133, re-enacting section 20 (*b*) of the Education Act, 1902, and section 4 of the Elementary Education (Defective and Epileptic Children) Act, 1914, *enabled the council of a non-county borough or urban district having any* powers or duties under that Act to relinquish any of them by agreement, to the county council, and section 3 (4) of the Act of 1921, 7 Halsbury's Statutes 132, provided that nothing in that section was to affect any relinquishment of powers under section 20 of the Act of 1902

It should be noted that the term "former authority" as here defined includes not only those authorities whose functions are relinquished entirely to the county council under this Act but also the councils of counties and county boroughs in relation to the functions exercised under the Education Acts, 1921–1939, even though they continue as local education authorities under this Act

(l) **"Foundation managers".**—Section 31 (1) of the Education Act, 1921, 7 Halsbury's Statutes 147, provided that the foundation managers of a school should be managers appointed *under the provisions* of the trust deed of the school, or under an order made in pursuance of that Act or section 11 of the Education Act, 1902, or under the trust deed of the school as modified by any such order By reason of the inclusion of secondary schools within the scope of the general system the term "foundation governors" is added by this Act and applies in relation to such schools Foundation managers and governors only exist in relation to voluntary schools and form only a proportion *of the managers and governors of such schools (see section 18 and 19,* pp. 127 and 129, *ante*)

(m) **"School".**—See the definition of this word in this section

(n) **"Managers and governors".**—See note (d) to section 17, p 122, *ante*

(o) **"Local education authority".**—See note (e[1]), *post*

(p) **"Minor authority".**—This term is defined in this section

(q) **"Trust deed".**—See the definition of this term in this section The previous words make it clear that the foundation managers or foundation governors may be appointed otherwise than in accordance with the trust deed In fact, under section 17, p 121, *ante*, the managers or governors (including the foundation managers or the foundation governors, in the case of a voluntary school) of a school are to be appointed by means of an instrument of management or *instrument of government made by order of the Minister, and the Minister is, of course, able* to vary the terms of a trust deed in various ways By reason of this definition the Minister will be able to adjust the previously existing composition of the managers or governors to accord with modern conditions and to take advantage of the formation of parochial church councils, diocesan education committees and the like, which have come into existence since very many trust deeds were drawn up

(r) **"In relation to any functions thereby conferred or imposed exclusively".**—The object of the latter part of the definition is to enable foundation managers or governors, who have, in respect of their limited functions (see, for example, sections 27 and 28, pp 143 and 144 *ante*), a dispute with the local education authority, to take that dispute to the Minister under

section 67, p 203, *ante* It also enables the Minister to make use, where necessary, of his powers of enforcement under section 99, p 237, *ante*, in relation to those functions of foundation managers and governors which are expressed to be duties, and also of his power to give directions under section 68, p 205, *ante*, to prevent the unreasonable exercise, by foundation managers or governors, of any of their functions, whether expressed to be duties or not

(s) **"Further education".**—Section 41, p 164 *ante*, defines this term as —

(*a*) full time and part time education for persons over compulsory school age, and

(*b*) leisure time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose

The same section imposes a duty upon local education authorities to secure the provision for their areas of adequate facilities for further education, as so defined, but neither empowers nor requires them to secure that provision otherwise than in accordance with schemes of further education (to be made under section 42 p 170, *ante*) or at county colleges (to be provided under section 43 p 171, *ante* See the notes to those sections

(t) **"Independent school".**—Part III of the Act (sections 70 to 75, pp 206 to 212 inclusive) deals with the registration of independent schools

(u) **"School".**—Though this word is defined in this section, the meaning there given is here qualified by the latter part of this definition

(v) **"Full-time education".**—This expression is nowhere defined in the Act, but see note (e) to section 36, p 157, *ante*

(w) **"Pupils".**—The word 'pupil" is defined elsewhere in this section

(x) **"Compulsory school age".**—See the definition of this term elsewhere in this section and, in particular, note (1), *ante*

(y) **"Maintained".**—By the definition contained in this section, the word maintain', in relation to any school or county college, has the meaning assigned to it by subsection (2) of this section

(*z*) **"Local education authority"** —See note (e[1]), *post*

(a[1]) **"School in respect of which grants are made by the Minister".**—See sections 100 and 101, pp 239 and 241, *ante*

(b[1]) **"Proprietor".**—See the definition of this term elsewhere in this section

(c[1]) **"Child".**—See the definition of this term elsewhere in this section

(d[1]) **"Has not attained the age of twelve years".**—As to the attainment of any particular age see subsection (5) of this section

(e[1]) **"Local education authority".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post*, and notes (j) and (k), *ante* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *ante*

(f[1]) **"County".**— See the definition of this word in this section, and note (j), *ante*

(g[1]) **"Local education order".**—Section 12, p 107, *ante*, requires the Minister, as soon as may be after approving, under section 11, p 103, *ante*, the development plan for the area of any local education authority, which is prepared and submitted to him in accordance with that section, to make a local education order for the area of the authority making various provisions with regard to the various types and categories of schools established and to be established for the area and defining the duties of the authority in relation thereto

(h[1]) **"Section three hundred and five of the Local Government Act, 1933".**—By that section, 26 Halsbury's Statutes 465 (*inter alia*) the term 'local government elector" is defined as a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts See, in particular, section 2 of the Representation of the People (Equal Franchise) Act, 1928, which substituted a new section for section 3 of the Representation of the People Act, 1918, 7 Halsbury's Statutes 550 The term used in the Education Act, 1921, was ratepayer" (defined in section 170 (11), *ibid*, 7 Halsbury's Statutes 213), a much narrower term than that now used See note (l) to section 13, p 109, *ante*

(i[1]) **"Part I of the First Schedule to this Act".**—See p 271, *post*

(j[1]) **"School or county college".**—See the respective definitions of these terms elsewhere in this section

(k[1]) **"Voluntary school"** —See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p. 113, *ante*

(l[1]) **"Section one hundred and two of this Act".**—Section 102, p 242, *ante*, requires the Minister to pay to the managers or governors of every aided school and of every special agreement school maintenance contributions equal to one half of any sums expended in carrying out their obligations under section 15 (3) (*a*), p 113, *ante*, in respect of alterations to the school buildings and repairs to the school premises, other than in the execution of repairs or alterations for which provision is made by a special agreement See the notes to both sections

(m[1]) **"Medical inspection".**—With regard to the medical inspection of pupils at schools and county colleges maintained by the local education authority, see section 48, p 179, *ante* Section 76, p 216, *ante*, makes provision for (*inter alia*) the medical inspection of pupils not attending such schools, and section 69, p 205, *ante*, enables the Minister to regulate the conduct (*inter alia*) of medical inspections for the purposes of the Act

(n[1]) **"Medical officer".**—This term, in relation to a local education authority, is defined elsewhere in this section

(o[1]) **"Duly qualified medical practitioner".**— Section 69, p 205, *ante*, enables the Minister (*inter alia*) to prescribe the special qualifications or experience to be possessed by duly qualified medical practitioners who conduct medical examinations or inspections for the purposes of the Act Formerly the only provisions having a similar effect were to be found in section 55 of the Education Act, 1921 7 Halsbury's Statutes 161 which required the certificates given under that section in respect of defective or epileptic children to be signed by a duly qualified medical practitioner approved by the Board of Education

(p[1]) **"Medical treatment".**—Section 48 (3), p 179, *ante*, requires every local education authority to make arrangements for securing that comprehensive facilities for free medical treatment are available either under the Act or otherwise for pupils in attendance at any school or county college maintained by the local education authority and authorises similar arrangements for senior pupils attending any other maintained educational establishment Section 78, p. 216, *ante*, enables similar arrangements to be made in respect of children and young persons

attending schools not maintained by the authority or in respect of whom special arrangements have been made to provide their education otherwise than at school

(q[1]) **" Pupil ".**—This term is defined elsewhere in this section

(r[1]) **" Primary or secondary education ".**—These terms are defined elsewhere in this section

(s[1]) **" Otherwise than at school ".**—As to the provision of primary or secondary education otherwise than at school, see section 56, p 191, *ante*

(t[1]) **" Minor authority ".**—As to the functions of a minor authority under the Act, see sections 18, 19 and 20 pp. 127, 129 and 130, *ante*, with respect to the appointment of managers of primary schools and governors of secondary schools Section 117 (1), p 266, *post*, provides for the construction of references in this definition to a borough and to the council of a borough for the purposes of the application of the Act to the county of London The definition is similar to, but expands, that contained in section 170 (15) of the Education Act, 1921, 7 Halsbury's Statutes 214, which is, as regards London, linked with the definition of metropolitan borough " in subsection (22) of that section, *ibid*

(u[1]) **" School maintained by the local education authority ".**—See the definition of " school " elsewhere in this section

(v[1]) **" County ".**—See the definition of this term elsewhere in this section, and particularly note (j), *ante*

(w[1]) **" Minor authorities acting jointly ".**—No provision appears to be made to determine a dispute between two or more minor authorities, see section 67, p 203, *ante*

(x[1]) **" Parent ".**—Apart from including persons liable to maintain a child or young person as well as persons having the actual custody the definition of this word in section 170 (12) of the Education Act, 1921, 7 Halsbury's Statutes 213, was similar to that now contained in this section The following cases refer to various persons who, for different purposes and under different statutes, have been regarded as the parent or as having the custody of another person, *Hance* v *Burnett* (1880), 45 J P 54, 19 Digest 564, *62*, *Hance* v *Fairhurst* (1882), 51 L J (M C) 219, 19 Digest 565, *69*, *London School Board* v *Jackson* (1881), 7 Q B D 502, 19 Digest 564, *63* *Southwark Union* v *London County Council* [1910] 2 K B 559, 19 Digest 569, *97*, *Gateshead Union* v *Durham County Council* [1918] 1 Ch 146, 19 Digest 553, *7*, and *Woodward* v *Oldfield* [1928] 1 K B 204, Digest Supp As to the persons liable to maintain a child, see also section 14 of the Poor Law Act, 1930, 12 Halsbury's Statutes 976

(y[1]) **" Child or young person ".**—See the definitions of these terms elsewhere in this section

(z[1]) **" Premises ".**—This word usually appears in the Act in conjunction with the word " school "—also defined in this section—in the phrase " school premises ". In the Education Act, 1921, and other statutes comprising the Education Acts, 1921–1939, the phrase was not used Instead, in comparable circumstances, it was usual to use the term " schoolhouse " which, by section 170 (6) of the Act of 1921, 7 Halsbury's Statutes 213, in relation to an elementary school included the teacher's dwelling house and the playground (if any) and the offices and all premises belonging to or required for a school The exclusion, in the present definition, of teachers' dwellinghouses, except where they are expressly included, will prevent for the future certain difficulties which arose under the previous law As to the standards to which school premises will be required to conform under the Act, see section 9 (2), p 100, *ante*, and as to the provision of playing fields, etc, see section 53, p 187, *ante*

(a[2]) **" Prescribed ".**—This word appears in a number of places in the Act, sometimes in clear relation to an express power to make regulations and elsewhere by itself As to the procedure to be adopted in making regulations under the Act, see section 112, p 254, *ante* Section 121, p 270, *post*, provides (*inter alia*) that any regulation in force under any enactment hereby repealed is to continue in operation and have effect as if made under the present Act and may be varied or revoked accordingly

(b[2]) **" Primary education ".**—Section 8 (1) (*a*), p 97, *ante*, defines primary education as full time education suitable to the requirements of junior pupils, the term " junior pupils " being defined elsewhere in this section See that definition and also notes (c), (f) (*g*) to section 8, *ante*

(c[2]) **" Primary school ".**—See, in addition to subsection (3) of this section, the definitions of " school " and ' primary education " elsewhere in this section It will be noted that " primary school " may include a nursery school (see section 9, p 100, *ante*)

(d[2]) **" Proprietor ".**—At least in theory this term includes the managers or governors of a school maintained by the local education authority, but in relation to such schools the Act usually refers expressly to the managers or the governors as the case may be, and where used the term usually refers, therefore, to schools not so maintained The terms " school " and " independent school ", used in the definition are themselves defined in this section The phrase " or body of persons ' appears to be tautologous in view of section 19 of the Interpretation Act, 1889, 18 Halsbury's Statutes 1001

(e[2]) **" Applications for the registration of independent schools ".**—Part III of the Act (section 70–75 inclusive, pp 206 to 212, *ante*), deals with the registration of independent schools

(f[2]) **" Provisionally registered school ".**—Proviso (*b*) to section 70 (1), p 206, *ante*, states that the registration of any independent school, for which application has been made under that subsection, is to be provisional only until the Minister, after the school has been inspected under section 77, p 213, *ante*, notifies the proprietor that the registration is final. The same subsection requires the Registrar of Independent Schools, appointed by the Minister, to keep a register of all independent schools, to be open to public inspection at all times

(g[2]) **" Pupil ".**—This term was not used in the Education Act, 1921, so as to need definition in the interpretation Instead the terms " child " and ' young person " were used in appropriate circumstances In this Act those terms are used in appropriate circumstances but the term " pupil " is also used, either to denote all persons for whom education must be provided, namely, from the time a child reaches the age of two years to the time when, as a young person, he attains the age of nineteen years, or in a qualified form It should be noted that the requirement to provide education does not relate only to children of compulsory school age, but also to children below that age (see sections 8 (2) (*b*) and 9 (4), pp 97 and 100, *ante*), and to young persons over compulsory school age (see the definitions of secondary education " and ' senior pupil " in section 8 (1) (*b*), p 97, *ante*, and this section respectively), and even to adults (see the definition of " further education " in section 41, p 164, *ante*). The term " pupil " is also used with the

prefixes " junior ", " senior " and " registered ", in each of which cases the phrases are defined in this section.

(h[2]) **" Registered pupil ".**—As to the meaning of the word " pupil " when used alone, see note (g[2]) to this section, *ante*. Section 36, p. 157, *ante*, imposes a duty upon the parent of every child of school age to cause him to receive education in accordance with that section either at school or otherwise. In the great majority of cases that duty is discharged by causing the child to attend school, and section 80, p. 218, *ante*, requires the proprietor of every school to cause a register to be kept containing prescribed particulars of all persons of compulsory school age who are pupils at the school. Any person so registered is a " registered pupil ", as here defined. The local education authority may require a parent who cannot satisfy the authority that he is fulfilling his duty under section 36, *ante*, to cause his child to become a registered pupil at a named school by serving upon him a school attendance order under section 37, p. 158, *ante*. A parent whose child of compulsory school age is a registered pupil at a school and fails to attend regularly is guilty of an offence under section 39, p. 161, *ante*.

The words " school ", " pupil ", " child " and " prescribed " which are used in this definition are each defined elsewhere in this section. Section 80 (3), p. 218, *ante*, provides that the regulations to be made by the Minister under that section are to prescribe the manner in which a child may become a registered pupil and the manner in which a child may be withdrawn from any school at which he is a registered pupil. The procedure as to withdrawals is not to apply, however, to a child in respect of whom a school attendance order is in force, and section 37 (4), p. 158, *ante*, applies in such a case.

(i[2]) **" Registered school ".**—As to the meaning of the word " school " when unqualified, see note (j[2]) to this section, *post*. Section 70, p. 206, *ante*, enables the proprietor of any independent school to apply for the registration of the school in the Register of Independent Schools to be kept under that section and, in fact, subsection (3) of that section makes it an offence for a person to conduct after the expiration of six months from 1st April, 1945, an independent school which is not either registered or provisionally registered. The meaning of the term " provisionally registered school " is given elsewhere in this section (see note (*f*[2]), *ante*), and a school does not, by virtue of proviso (*b*) to section 70 (1), p. 206, *ante*, cease to be a provisionally registered school and become a registered school until the Minister gives notice to the proprietor that the registration is final, after the school has been inspected on his behalf under section 77, p. 213, *ante*. Subsection (2) of section 70, *ante*, enables the Minister, however, to exempt any particular independent school or class of schools from registration, and any school so exempted will be deemed to be a registered school.

The term " independent school " is defined elsewhere in this section.

(j[2]) **" School ".**—This a generic term covering all types of schools and is used with many different qualifications throughout the Act, and even as a qualifying term itself, apart from a special definition in section 69 ; 7 Halsbury's Statutes 167, for the purposes of Part V, which dealt with blind, deaf, defective and epileptic children, the word " school " was not defined in the Education Act, 1921, probably because that Act dealt separately with elementary and higher education, so that the terms " elementary school " or " public elementary school " covered all schools at which elementary education was provided, whilst the provisions of that Act relating to higher education referred mostly to particular types of schools and other educational institutions. Section 15 (1) of the Education Act, 1936 ; 29 Halsbury's Statutes 128, however, provided that for the purposes of that Act " school " was to include a separate department of a school. This is interesting in relation to the question as to what constitutes a " separate school " for the purposes of section 8 (2) (*a*), p. 97, *ante* (see note (o) to that section and subsection (3) of this section). The expression " elementary school " was defined by section 170 (1) of the Education Act, 1921 ; 7 Halsbury's Statutes 212, as (except in the case of courses of advanced instruction given in pursuance of that Act) a school or department of a school at which elementary education was the principal part of the education there given, but did not include any school or department of a school at which the ordinary payments in respect of the instruction of each scholar exceeded ninepence a week, or any school carried on as an evening school under the regulations of the Board of Education or an evening school.

The various types of school mentioned in the present definition of the word are referred to in the following notes.

Unless maintained by a local education authority or in receipt of direct grant from the Minister, in which cases the point is hardly likely to arise, a school, to be a school, must have at least five pupils of compulsory school age (see the definition of " independent school " in this section).

(k[2]) **" An institution for providing primary or secondary education ".**—Definitions elsewhere in this section give to the terms " primary education " and " secondary education " the meanings assigned to them by section 8, p. 97, *ante* (see, respectively, paragraphs (*a*) and (*b*) of subsection (1) of that section) whilst, subject to the provisions of subsection (3) of this section, schools for providing primary and secondary education are respectively called " primary schools " and " secondary schools ".

(l[2]) **" Both primary and secondary education ".**—Section 8 (2) (*a*), p. 97, *ante*, provides that in fulfilling their duties of securing that sufficient schools are available local education authorities are to have regard (*inter alia*) to the need for securing that primary and secondary education are provided in separate schools. By a proviso to the subsection this does not however, apply to special schools, though by regulations made under section 33 (3), p. 151, *ante*, the Minister may impose requirements as to the organisation of any special school as a primary or secondary school. Since schools which were, under the previous law, senior public elementary schools become secondary schools under this Act, and the reorganisation schemes of local education authorities in accordance with the Hadow Report had by no means been completed at the date of passing of the Act, many instances yet remain where senior pupils are not taught in separate schools or departments. In consequence it will take time to comply with the requirement of section 8 (2) (*a*), *ante*, and, in fact, provision is made to enable the local education order which has to be made under section 12, p. 107, *ante*, to specify that individual schools for providing primary and secondary education which are maintained or assisted by the local education authority shall, for the time being, be organised for the provision of both primary and secondary education. By subsection (3) of this section, schools so organised are to be regarded for the purposes of the Act as primary schools unless, in the case of schools in which the primary education is provided in a separate junior or preparatory department, the Minister directs that, for the purposes of the Act, the school shall be deemed to be a secondary school.

No such specific requirement regarding the separation of primary and secondary education is contained in any provision of the Act relating to independent schools or schools in receipt of direct grants from the Minister, but the Act is drawn in such a manner that he has power to impose such a requirement in suitable circumstances In the case of an independent school, whether provisionally or finally registered, the Minister may, under section 71, p 208, *ante*, serve a notice of complaint upon the proprietor requiring him to remedy the causes of complaint, amongst which are included —

(*a*) inadequate or unsuitable accommodation having regard to the number, ages and sex of the pupils attending the school ;

(*b*) failure to provide efficient and suitable instruction at the school having regard to the ages and sex of the pupils attending the school

As regards direct grant schools provision enabling the Minister to require the separation of primary and secondary education may, of course, be made by the regulations which the Minister is to make in relation to the payment of such grants under section 100, p, 239, *ante*

(m[t]) **" A school maintained by the local education authority "** —Section 6, p 87, *ante*, and the First Schedule p, 271, *post*, specifies which authorities are to be local education authorities for the purposes of the Act though sections 117 and 118, pp 266 and 267, *post*, make special provision in relation to London and the Isles of Scilly The expression " maintain " is defined in subsection (2) of this section Primary and secondary schools maintained by a local education authority may be —

(1) **County schools,** which are schools of the type referred to established either by a local education authority or a former authority or, though not in fact established by a former authority, deemed to be, or required to be treated as, schools provided by a former authority under an enactment repealed by the present Act (section 9 (2), p 100, *ante*) ,

(2) **Voluntary schools,** which are primary or secondary schools so maintained but established otherwise than by a local education authority or a former authority (section 9 (2), *ante*) Subject to the provisions of sections 13 and 14, pp 109 and 112, *ante*, as to the discontinuance of voluntary schools, every school which was a public elementary school provided otherwise than by a former authority, immediately before the commencement of Part II of the Act, is, if it was then maintained by a former authority, to be maintained as a voluntary school under this Act (section 9 (3), p 100, *ante*)

Subject to the transitional provisions as to the management and maintenance of voluntary schools in section 32, p 150, *ante*, voluntary schools are to be of three categories, *i e* controlled schools, aided schools and special agreement schools (see section 15, p 113, *ante*) ,

(3) **Nursery schools,** which are neither county nor voluntary schools (nor necessarily, in fact, maintained by a local education authority) but are defined by section 9 (4), p 100, *ante*, as primary schools which are used mainly for the purpose of providing education for children who have attained the age of two years but have not attained the age of five years ,

(4) **Special schools,** which also are neither county nor voluntary schools (nor necessarily maintained by a local education authority) They are defined by section 9 (5), p 100, *ante*, as schools especially organised for the purpose of providing special educational treatment for pupils requiring such treatment and approved by the Minister for that purpose In addition section 33, p 151, *ante*, enables the Minister to make provision by regulations as to the requirements to be complied with by any school as a condition of such approval and as to the withdrawal of approval from a school which fails so to comply

(n[t]) **" An independent school ".**—The term ' independent school ' is defined elsewhere in this section, see notes (t) (b[t]) *ante*

(o[t]) **" A school in respect of which grants are made by the Minister to the proprietor of the school ".**—These schools are commonly referred to as direct grant schools, see the general note to section 8, p 97, *ante* Provision is made by the Act for the continuance of this type of school and section 100, p 239, *ante*, authorises the payment of such grants as are here referred to

(p[2]) **" Secondary education ".**—Section 8 (1) (*b*), p 97, *ante*, defines secondary education as full-time education suitable to the requirements of senior pupils, other than such full time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education, the term " senior pupil " being defined elsewhere in this section See that definition, and also notes (h) (i) and (k) to section 8, *ante* As regards schemes of further education, see section 40, p 163, *ante*

(q[2]) **" Secondary school ".**—See, in addition to subsection (3) of this section, the definitions of " school " and " secondary education " elsewhere in this section

(r[2]) **" Senior pupil ".**— As to the meaning of the word " pupil " when used alone, see the definition elsewhere in this section As to the attainment of any particular age, see subsection (5) of this section It will be noted that the term includes persons who are over, as well as persons who are of, compulsory school age, and the duties of securing sufficient schools for providing secondary education, imposed on local education authorities by section 8 p 97, *ante*, extend by reason of this definition to require the provision of facilities for pupils up to the age of nineteen years if they or their parents desire such facilities

(s[2]) **" Special agreement "** —The Third Schedule, p 283 *post*, relates to special agreements in respect of certain voluntary schools which are to be known as special agreement schools See section 15, p 113, *ante*, and the notes to that section

(t[2]) **" Special educational treatment "** —Section 8 (2) (*c*), p 97, *ante*, defines this term as education by special methods appropriate for persons suffering from any disability of mind or body, either in special schools or otherwise. See notes (s), (t) and (u) to that section, and sections 9 (5) and 33 pp 100 and 151, *ante*

(u[2]) **" Trust deed "** —By section 170 (17) of the Education Act, 1921 , 7 Halsbury's Statutes 214 this expression included any instrument regulating the trusts or management of a school or college, and therefore included not only trust deeds in the usual sense in which the term is used but also Orders of the Chancery Division of the High Court, Orders of a county court under the Charitable Trusts Acts, orders and schemes of the Charity Commissioners and the Board of Education under the same Acts and schemes made under the Endowed Schools Acts, as well as certain other schemes or instruments The present definition will also cover all such instruments but is necessarily more specific owing to the creation under this Act of the various instruments, etc referred to in the definition

(v[2]) **" Voluntary school ".**—See section 9 (2), p. 100, *ante*, and as to the classification of voluntary schools as controlled, aidee and special agreement schools, section 15, p. 113, *ante*.

(w[2]) **" Instrument of management, instrument of government ".**—See sections 17, 18 and 19, pp. 121, 127 and 129, *ante*.

(x[2]) **" Rules of management, or articles of government ".**—As to the making of such rules and articles, see section 17 (3), p. 121, *ante*.

(y[2]) **" Managers or governors ".**—See note (*d*) to section 17, p. 122, *ante*.

(z[2]) **" Young person ".**—This expression was formerly defined by section 170 (14) of the Education Act, 1921 ; 7 Halsbury's Statutes 214, as a person under eighteen years of age who was no longer a child. Until a person reaches the upper limit of compulsory school age (as defined in this section) he is called a child for the purposes of the Act. That term also is defined by this section. As to the attainment of any particular age, see subsection (5) of this section. The terms " child " and " young person " respectively are also defined in the Children and Young Persons Acts for the purposes of those Acts but section 58, p. 194, *ante*, extends the definition of " child " for those purposes and thereby restricts the age-range covered by the term " young person ". It should also be noted that the term " senior pupil ", as defined elsewhere in this section, includes persons who have ceased to be young persons.

(a[3]) **" The duty of a local education authority ".**—As to the duties of local education authorities in relation to the maintenance of primary and secondary schools, including county schools, nursery schools, special schools and voluntary schools, see sections 9, 15 and 32, pp 100, 113 and 150, *ante*, and the notes to those sections. As regards the maintenance of county colleges, see section 43, p 171, *ante*.

(b[3]) **" An aided school or a special agreement school ".**—As to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p. 113, *ante*.

(c[3]) **" Special agreement ".**—See *the definition of this term elsewhere in this section*, and, for the provisions relating to special agreements, the Third Schedule, p 283, *post*.

(d[3]) **" Managers or governors ".**—See note (d) to section 17, p. 122, *ante*.

(e[3]) **" Assisted ".**—Power to assist a school not maintained by the local education authority is given by section 9 (1), p. 100, *ante*. Other powers of assistance are given by sections 47, p 178, *ante* (interim provisions as to further education), 62, p. 198, *ante* (training of teachers) 81, p. 219, *ante* (assistance by means of scholarships and otherwise), and 82, p. 220, *ante* (educational research).

(f[3]) **" References in this Act to primary schools ".**—The meaning of this subsection is discussed in note (o) to section 8, p 97, *ante*, and in the notes on the definition of " school " elsewhere in this section.

(g[3]) **" *The Minister may direct* ".**—*As to the revocation or variation of orders and directions*, see section 111, p. 254, *ante*.

(h[3]) **" The commencement of Part II of this Act ".**—Part II of the Act comes into operation on 1st April, 1945 (section 121, p. 270, *post*)

(i[3]) **" Former authority ".**—See the definition of this term elsewhere in this section.

(j[3]) **" Agreed syllabus ".**—See the definition of this term elsewhere in this section.

(k[3]) **" Fifth Schedule to this Act ".**—See p. 286, *post*

(l[3]) **" Until the end of the term ".**—This subsection re-enacts and extends to all schools and to county colleges the terms of section 138 (1) of the Education Act, 1921 ; 7 Halsbury's Statutes 202, and means that any reference to a specified age in the Act and particularly in the provisions dealing with compulsory attendance at primary and secondary schools (sections 35–40, *pp. 155 to 163, ante*), and county colleges (*sections 44–46, pp. 172 to 177, ante*) must be construed as a reference to the end of the term during which that age is attained. The expression " school term " was defined by section 170 (8) of the Education Act, 1921 ; 7 Halsbury's Statutes 213, as the term as fixed by the local education authority. Such a definition is now unnecessary, since specific power to determine the times at which the school terms shall begin and end is now given by section 23, p. 134, *ante*

(m[3]) **" Section forty-six of the Education Act, 1921 ".**—This section ; 7 Halsbury's Statutes 142 (*inter alia*) required every local education authority to make byelaws requiring the parents of children between the age of five years and such age not being less than fourteen nor more than fifteen as might be fixed by the byelaws to cause those children (unless there was some reasonable excuse) to attend school at such times as might be determined by the byelaws.

(n[3]) **" *Deemed to be over compulsory school age* ".**—*This is a normal provision to* include in an Act which raises the school-leaving age. It has a temporary effect, and means that a child who has left school before the age is raised cannot be required to return to school. In the case of the present Act it will apply twice, *i.e.*, when the school leaving-age is raised to fifteen and again when it is raised to sixteen (section 35, p. 155, *ante*).

(o[3]) **" A public elementary school within the meaning of the enactments repealed by this Act ".**—Section 27 of the Education Act, 1921 ; 7 Halsbury's Statutes 142, provided that every elementary school (as defined in section 170 (1), *ibid.* ; 7 Halsbury's Statutes 212) which was conducted in accordance with the regulations therein contained should be a public elementary school within the meaning of that Act. There was one exception : by the second paragraph of section 18 (5), *ibid.* ; 7 Halsbury's Statutes 139, schools provided by the local education authority for blind, deaf, epileptic or defective children, and any other schools which, in the opinion of the Board of Education, were not of a local character, should not be treated for the purposes of that subsection, which dealt with the provision of sites for new public elementary schools in London, as public elementary schools.

(p[3]) **" War damage ".**—This term is not defined in the Act. See, however, the definition of the term in section 2 of the War Damage Act, 1943 ; 36 Halsbury's Statutes 338.

(q[3]) **" Closed in accordance with those enactments ".**—See section 19, 40 and 57 of the Education Act, 1921 ; 7 Halsbury's Statutes 139, 151, 164.

(r[3]) **" References to any enactment ".**—This subsection follows the lines of section 16 (3) of the Education Act, 1936 ; 26 Halsbury's Statutes 128, and is a usual provision in modern legislation.

115. Saving as to persons in the service of the Crown.—No power or duty conferred or imposed by this Act on the Minister, on local education authorities (a), or on parents (b), shall be construed as relating to any person who is employed by or under the Crown in any service or capacity

with respect to which the Minister certifies that, by reason of the arrangements made for the education of children and young persons (c) employed therein, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary. [539]

NOTES

This section exempts from the provisions of the Act all children and young persons who *are employed by or under the Crown in any service or capacity if the Minister certifies that the* arrangements made for their education render the application of the Act unnecessary. The provision is new to the law of education.

(a) **"Local education authorities".**—See section 6, p. 87, *ante*, and the First Schedule p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Parents".**—This term is defined by section 114 (1), p. 255, *ante*.

(c) **"Children and young persons".**—See the definitions of "child" and "young person" in section 114 (1), p. 255, *ante*.

116. Saving as to persons of unsound mind and persons detained by a court.—No power or duty conferred or imposed by this Act on the Minister, on local education authorities (a), or on parents (b), shall be construed as relating to any person who is the subject of an order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930, or is being detained in pursuance of section twenty-five of the Lunacy Act, 1890, or as a criminal lunatic, or in pursuance of an order made under the Criminal Lunatics Act, 1884, or is undergoing treatment as a voluntary patient under section one or a temporary patient under section five of the Mental Treatment Act, 1930, or is a person placed in an institution or a certified house, or under guardianship, under section three of the Mental Deficiency Act, 1913, or is the subject of an order under section six, eight or nine of that Act or is an inmate of a home approved under section fifty of that Act or is the subject of a notification under subsection (2) of section fifty-one of that Act or has been reported under subsection (3) of section fifty-seven of this Act as having been found incapable of receiving education at school, or to any person who is detained in pursuance of an order made by any court. [540]

NOTES

This section exempts persons of the types mentioned therein from penalties to which they might otherwise be liable if they failed to discharge their duties as parents or in other ways under the Act.

(a) **"Local education authorities".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *post*.

(b) **"Parents".**—See the definition of the word "parent" in section 114 (1), p. 255, *ante*.

117. Applications to London.—(1) For the purposes of the application of this Act to the County of London (a) references in the definition of the expression "minor authority" (b) to a borough shall be construed as references to the City of London and to a metropolitan borough, and references in that definition to the council of a borough shall be construed as references to the Common Council of the City of London and to the council of a metropolitan borough respectively. [541]

(2) Subsection (4) of section fifty-four of this Act (bb) shall, in relation to the County of London, have effect as if for references therein to the council of a county district there were substituted references to a sanitary authority for the purposes of the Public Health (London) Act, 1936. [542]

(3) Before approving any proposals submitted to him under section thirteen of this Act (c) with respect to any school (d) which is or is to be, situated within the area of the City of London or within the area of a metropolitan borough, the Minister shall afford to the Common Council of the City of London or to the council of the borough, as the case may be, an opportunity of making representations to him with respect to the proposals. [543]

(4) For the purposes of the application of sections eighty-eight, ninety, ninety-three and one hundred and fourteen of this Act (e) in relation to the local education authority (f) for the County of London :—

(*a*) the references in those sections to the Local Government Act, 1933, shall be construed as references to the London Government Act, 1939; and

(*b*) the references in those sections to sections one hundred and sixty-three, one hundred and sixty-four, one hundred and sixty-five, two hundred and ninety and three hundred and five of the said Act of 1933 shall be respectively construed as references to sections one hundred and six, one hundred and seven, one hundred and eight, one hundred and eighty-nine and two hundred and six of the said Act of 1939. [544]

(5) Parts I and III of the First Schedule to this Act shall not apply to the London County Council. [545]

NOTES

This section applies the provisions of the Act to the peculiar circumstances arising as a result of the differences between the structure of local government in London and elsewhere and from the fact that different statutes often apply to London.

(a) **"County of London".**—See the definition of "county" in section 114 (1), p. 255, *ante*, but note that subsection (4) of this section substitutes a reference to the London Government Act, 1939; 31 Halsbury's Statutes 378, for the reference in that definition to the Local Government Act, 1933, 26 Halsbury's Statutes 295.

(b) **"Minor authority".**—This term is defined in section 114 (1), p. 255, *ante*. The effect of this subsection was formerly contained in subsections (15) and (22) of section 170 of the Education Act, 1921; 7 Halsbury's Statutes 214.

(bb) **"Section fifty-four of this Act".**—See section 54, p. 188, *ante*.

(c) **"Section thirteen of this Act".**—See section 13, p. 109, *ante*.

(d) **"School".**—See the definition of this term in section 114 (1), p. 255, *ante*.

(e) **"Sections eighty-eight, ninety, ninety-three and one hundred and fourteen of this Act".**—See those sections of pp. 225, 226, 229 and 255, *ante*.

(f) **"Local education authority".**—See section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. By subsection (4) of this section the provisions of the First Schedule relating to the establishment of joint education boards and of divisional executives do not apply to London.

118. Application to Isles of Scilly.—The Minister shall by order (a) provide for the application of this Act to the Isles of Scilly as if those isles were a separate county (b), and any such order may provide for the application of this Act to those isles subject to such modifications as may be specified in the order. [546]

NOTES

This section enables the Minister to provide by order for the application of the Act to the Isles of Scilly as if the islands were a separate county and therefore a separate local education authority under section 6, p. 87, *ante*, and the First Schedule, p. 271, *post*. It replaces section 169 (5) of the Education Act, 1921; 7 Halsbury's Statutes 212, which provided that for the purposes of that Act the council of the Isles of Scilly should be the local education authority for the islands, and that the expenses of the council under that Act should be general expenses of the council.

The council of the Isles of Scilly is a council which was constituted by provisional order under section 49 of the Local Government Act, 1888; 10 Halsbury's Statutes 227, and confirmed by the Local Government Board Provisional Orders Confirmation (No. 6) Act, 1890. Section 292 of the Local Government Act, 1933; 26 Halsbury's Statutes 460, enables the Minister of Health by order to regulate the application of that Act to the islands and this section adopts the same solution. One of the courses which the Minister might adopt is to constitute a joint education board for the Isles of Scilly and the County of Cornwall under Part I of the First Schedule, p. 271, *post*, although he is not bound to do so, and in view of the peculiar constitution of the council of the Isles and the fact their local government functions generally differ from those of any of the normal types of local authority, a different course may be considered desirable.

(a) **"The Minister shall by order".**—As to the revocation or variation of such an order, see section 111, p. 254, *ante*.

(b) **"County".**—See the definition of this term in section 114 (1), p. 255, *ante*.

119. Commencement.—Parts I and V of this Act shall come into operation on the passing of this Act; Parts II and IV of this Act shall come into operation on the first day of April nineteen hundred and forty-five; and Part III of this Act shall come into operation on such date after the said first day of April as His Majesty may by Order in Council appoint for the commencement of that Part. [547]

NOTES

This section specifies when the various Parts of the Act came or are to come into operation. The timetable may be summarised as follows:—

(*1*) On the passing of the Act (3rd August, 1944), Parts I and V of the Act came into operation, thus enabling the Minister to take steps under section 108 to ensure that the new local education authorities are in a position to undertake their new tasks.

(2) (*a*) On the 1st April, 1945, Parts II and IV of the Act take effect; on that date the new local education authorities come into operation, the functions of other authorities under the Education Acts, 1921–1939, are transferred to them, and the local education authorities proceed with the preparation of their development plans for primary and secondary education

(*b*) On the same date (subject to postponement of the date for not more than two years by order under section 108 (3), p. 250, *ante*) the school leaving age would have been raised to fifteen had it not been found necessary to make (under section 108 (3), *supra*) the Compulsory School Age (Postponement) Order, 1944, S R & O 1944 No. 979—see the notes to that section In view of that Order the date in question will now be some time between 1st April, 1945, and 1st April, 1947, and probably towards the end of that period As soon thereafter as the Minister is satisfied that it is practicable to do so the school leaving age will be raised to sixteen by means of an Order in Council.

(*c*) After the preparation of their development plans the local education authorities will institute the necessary preliminary measures for the provision of county colleges. The date on which they will be required to make the necessary provision is also to be fixed by Order in Council.

(*d*) Local education authorities will also be required to prepare schemes for the provision of other forms of further education.

(3) Part III of the Act, relating to the registration and inspection of independent schools, is to come into operation on a date to be fixed by Order in Council

120. Amendment of enactments.—(1) On and after the date of the commencement of Part II of this Act (a) any enactment passed before that date shall, unless the context otherwise requires, be construed as if '—

(*a*) for references therein to an elementary school or to a public elementary school (whether or not any reference is made therein to the payment of parliamentary grants in respect of the school) there were substituted references to a county school or voluntary school (b) as the context may require ,

(*b*) for references therein to a school certified by the Board of Education, in accordance with the provisions of Part V of the Education Act, 1921, as suitable for providing education for blind, deaf, defective or epileptic children, there were substituted references to a special school (bb) ;

(*c*) for references therein to the managers of a school there were substituted, in relation to a county secondary school or a voluntary secondary school, references to the governors (c) of the school ,

(*d*) for references therein to elementary education or to higher education there were substituted references to such education as may be provided by a local education authority (d) in the exercise of their functions under Part II of this Act ;

(*e*) for references therein to a local education authority, to a local education authority for elementary education, or to a local education authority for higher education, there were substituted references to a local education authority within the meaning of this Act. [548]

(2) In relation to any young person (e) punishable under this Act or under section seventy-eight of the Unemployment Insurance Act, 1935, subsection (3) of section fifty-two and section fifty-four of the Children and Young Persons Act, 1933 (which relate to the substitution of other punishments for imprisonment), shall have effect as if references therein to a young person included references to any person who has not attained the age of eighteen years (f). [549]

(3) The enactments mentioned in the first column of the Eighth Schedule to this Act (g) shall, except in so far as any of them extend to Scotland (h) have effect subject to the amendments specified in the second column of that Schedule .

Provided that Part I of the said Schedule shall come into operation on the date of the commencement of Part II of this Act, and Part II of the said Schedule shall come into operation on the date on which section forty-four of this Act (i) comes into operation [550]

(4) Where by virtue of this Act any functions cease to be exercisable by the council of a county district under the Children and Young Persons Acts, 1933 and 1938 (k), the following provisions of this Act, that is to say '—

(*a*) subsections (3) and (4) of section six (l) : and

(*b*) section ninety seven (m) ,

shall have effect as if those functions had been exercisable under the Education Acts, 1921 and 1939 (o) , and, in relation to any such functions, the provisions of section ninety-six and of subsection (3) of section ninety-eight of this Act (p) shall have effect as if for the references therein to the Minister of Education there were substituted references to the Secretary of State **[551]**

(5) For the purposes of any bye-laws under Part II of the Children and Young Persons Act, 1933 (q), the expression " child " shall have the same meaning as it has for the purposes of the said Part II , and any bye-laws made by the council of a county district under the said Part II which are in force immediately before the date of the commencement of Part II of this Act shall, in relation to the area to which they extend, continue in operation on and after that date as if they had been made by the local education authority for the area in which the county district is situated, and may be varied or revoked accordingly **[552]**

NOTES

The somewhat unusual course has been taken in this Act of including separate provisions in this and the next following section, dealing with amendments and repeals respectively The step has even been taken of providing in subsection (3) of this section and the Eighth Schedule, p 291, *post*, that a certain enactment shall be amended to the extent indicated in that Schedule by for instance, the emission of certain words, and then by section 121 and the Ninth Schedule, pp 270 and 294, *post*, of repealing those words in addition

The main reason for the inclusion of the present section may lie in the fact that the present Act is an Act to reform the law of education and is not a consolidating Act It is therefore necessary to provide in numerous other statutes for references to educational matters in those statutes to be brought into line with the new system of education which is created by this Act

(a) **" The commencement of Part II of this Act ".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p 267, *ante*)

(b) **" County school or voluntary school "** —See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, see section 15, p 113, *ante*

(bb) **" Special school ".**—See sections 9 (5) and 33, pp 100 and 151, *ante*

(c) **" Governors ".**—See note (d) to section 17, p 122, *ante*

(d) **" Local education authority ".**—See section 6, p 87, *ante*, and the First Schedule, p 271, *post* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *ante*

(e) **" Young person ".**—See the definition of this term in section 114 (1), p 255, *ante*

(f) **" Who has not attained the age of eighteen years ".**—As to the attainment of any particular age, see section 114 (5), p 258, *ante*

(g) **" Eighth Schedule to this Act ".**—See p 291, *post*

(h) **" Scotland ".**—By section 122 (2), p 271, *post*, the Act does not extend to Scotland or Northern Ireland

(i) **" Section forty-four of this Act ".**—By section 44 (1), p 172, *ante*, that section is to come into operation on such date as soon as practicable after the date determined by Order in Council under section 43, p 171, *ante*, as the Minister may by order direct Section 43, *supra*, deals with the establishment of county colleges, and the date on which the duty of establishing and maintaining them is to be imposed on local education authorities is to be fixed by Order in Council Section 44, *supra*, which deals with the duty to attend county colleges, is to be brought into operation as soon as possible after that date

(k) **" The Children and Young Persons Acts, 1933 and 1938 ".**—By section 96 (1) of the Children and Young Persons Act, 1933 , 26 Halsbury's Statutes 232, the functions of local authorities under that Act were (subject, as regards the City of London, to section 97, *ibid*), as respects children, to be functions of local education authorities for elementary education and, as respects other persons, functions of councils of counties and county boroughs This means that together with the transfer of educational functions from the former " Part III " authorities to local education authorities under section 6, p 87, *ante*, there are also transferred the functions of those authorities under the Children and Young Persons Acts

(l) **" Subsections (3) and (4) of section six ".**—Section 6 (3) and (4), p 87, *ante*, deal with the transfer to local education authorities under this Act of property and officers of authorities whose educational powers are transferred which were held or who were employed solely or mainly in connection with educational functions

(m) **" Section ninety-seven ".**—This section (see p 233, *ante*) deals with the application of the Local Government Staffs (War Service) Act, 1939 , 32 Halsbury's Statutes 1118, to persons who, before undertaking war service, were employed on educational matters by an authority whose functions are transferred by the Act

(o) **" Education Acts, 1921 to 1939 ".**—See note (k) to section 6, p 87, *ante*

(p) **" Section ninety-six and of subsection (3) of section ninety-eight of this Act ".**—Section 96, p 231, *ante*, contains a number of provisions which are consequential upon the cessation of the functions of former authorities, whilst section 98 (3), p 234, *ante*, applies the Fourth Schedule of the Local Government Act, 1933 , 26 Halsbury's Statutes 504, for the purposes of the determination and payment of compensation under this Act

(q) **" Bye-laws under Part II of the Children and Young Persons Act, 1933 ".**—Bye laws may be made under the following sections of Part II of the Children and Young Persons Act, 1933 —

(1) **Section 18** ; 26 Halsbury's Statutes 181, with respect to the employment of children ,

(2) **Section 19,** *ibid.*, 182, with respect to the employment of persons under the age of eighteen years other than children; and

(3) **Section 20,** *ibid.*, 183, regulating or prohibiting street trading by persons under the age of eighteen years.

121. Repeal of enactments.—Section eighty-three of the Elementary Education Act, 1870, the Board of Education Act, 1899, and sections one and two of the Education Act, 1921, are hereby repealed as from the date declared by His Majesty in Council to be the date on which the first appointment under this Act (a) of a Minister of Education took effect; the enactments mentioned in the first column of Part I of the Ninth Schedule to this Act (b) are, to the extent mentioned in the third column of that Part, hereby repealed, except in so far as any of them extend to Scotland (c), as from the date of the commencement of Part II of this Act (d); and the enactments mentioned in the first column of Part II of that Schedule are to the extent mentioned in the third column of that Part hereby repealed, except in so far as they extend to Scotland, as from the date on which section forty-four of this Act (e) comes into operation:

Provided that—

(*a*) any regulation (f) Order in Council order (g) or other instrument in force under any enactment hereby repealed shall continue in operation and have effect as if made under this Act and may be varied or revoked accordingly; and

(*b*) the provisions of the Education Act, 1921, relating to continuation schools (h) shall, in any area in which sections seventy-six, seventy-seven and ninety-three of that Act were in operation immediately before the commencement of Part II of this Act, continue in force until the date on which section forty-four of this Act comes into operation. [553]

NOTES

The remarks in the general note to section 120, p. 268, *ante*, regarding the course adopted in this Act of including separate sections dealing with amendments and repeals respectively, should be read in connection with this section also.

Section 38 of the Interpretation Act, 1889; 18 Halsbury's Statutes 1005, provides as follows:—

"(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed, or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed".

(a) **"First appointment under this Act".**—See section 1 (1), p. 83, *ante*. The effect of this is that although Part I of the Act came into operation immediately upon the passing of the Act (3rd August, 1944) the Board of Education Act, 1899; 7 Halsbury's Statutes 124, continued to apply and the office of President of the Board continued to exist until the first appointment, under this Act, of a Minister of Education. By the Education (Date of Appointment of Minister) Order, 1944, S.R. & O 1944 No. 937, which was made under section 2, p. 85, *ante*, on 10th August, 1944, that date was declared to be the date on which the first appointment under the Act of a Minister of Education, namely, the Rt. Hon. R. A. Butler, took effect.

(b) **"Ninth Schedule to this Act".**—See p. 294, *post*

(c) **"Scotland".**—By section 122 (2), p. 271, *post*, the Act does not extend to Scotland or Northern Ireland.

(d) **"The commencement of Part II of this Act".**—Part II of the Act comes into operation on 1st April, 1945 (section 119, p. 267, *ante*).

(e) **"Section forty-four of this Act".**—See note (1) to section 120, p. 268, *ante*.

(f) **"Regulation".**—As to the making of regulations under this Act, see section 112, p. 254, *ante*.

(g) **"Order".**—As to the revocation and variation of orders made under this Act, see section 111, p. 254, *ante*.

(h) **"Continuation schools".**—The provisions of the Education Act, 1921, referred to are sections 75–79 inclusive; 7 Halsbury's Statutes 170–174.

122. Short title and extent.—(1) This Act may be cited as the Education Act, 1944. [554]

(2) *This Act shall not extend to Scotland or to Northern Ireland* [555]

NOTES

This section is equivalent to subsections (1) and (2) of section 173 of the Education Act, 1921; 7 Halsbury's Statutes 216

As to the dates on which the various Parts of the Act come into operation, see section 119, p. 267, *ante*

SCHEDULES

FIRST SCHEDULE

Section 6

LOCAL ADMINISTRATION

GENERAL NOTE

The First Schedule to the Act is complementary to section 6, p 87, *ante*, and supplements the simplification of the local system of educational administration for which that section makes provision by—

(1) recognising the necessity of making a few exceptions by the creation, in suitable instances, of joint education boards,

(2) re enacting, in a revised form, the provisions of the previous law relating to education committees, and

(3) creating, for the dual purposes of softening the blow to the former "Part III" authorities caused by the transfer of their educational functions to the county councils and of stimulating interest in education in local government circles which have hitherto had no concern with educational administration, bodies called divisional executives to which some of the functions of the local education authority are to be delegated under schemes of divisional administration

In considering the terms of this Schedule, regard should be had to subsections (1) and (2) of section 6 *ante*, which enact—

(1) that, subject to the provisions of Part I of this Schedule, the local education authorities for the purposes of the Act are to be the councils of counties and county boroughs only, and

(2) that the local administration of the statutory system of public education is to be conducted in accordance with Parts II and III of this Schedule,

and particularly to the general and other notes to that section.

Detailed notes relating to the matters dealt with in this Schedule follow the respective Parts of the Schedule, *post*.

PART I

JOINT EDUCATION BOARDS

1 Where it appears to the Minister that the establishment of a joint board as the local education authority (a) for the areas of two or more councils to whom this Part of this Schedule applies (b) would tend to diminish expense or to increase efficiency or would otherwise be of public advantage, the Minister may by order (c) constitute a joint board (in this Act referred to as a '*joint education board*'), consisting of members appointed by those councils, and direct that the board shall be the local education authority for the areas of those councils.

Provided that the Minister shall not make such an order except after a local inquiry (d), unless all the councils for the areas of which the board is to be the local education authority have consented to the making of the order

2 A joint education board so constituted shall be a body corporate with perpetual succession and a common seal and power to hold land for the purposes of their functions without licence in mortmain (e).

3 An order constituting a joint education board —

(*a*) may, without prejudice to the provisions of section two hundred and ninety-three of the Local Government Act, 1933 (f) (which authorises the application of provisions of that Act to joint boards) provide for regulating the appointment and term of office of members of the board, for regulating the meetings and proceedings of the board, and for determining the manner in which the expenses of the board are to be defrayed,

(*b*) may contain such other provisions (including provision for the transfer of officers, property, and liabilities (g), and for the adjustment of accounts and apportionment of liabilities (h)) as appear to the Minister to be expedient for enabling the board to exercise their functions,

(*c*) may provide for securing that where in consequence of the establishment of the board as the local education authority for the area of any council any person who was an officer of that council immediately before the date on which the board became the local education authority for the area thereof suffers direct pecuniary loss (i) by reason of the determination of his appointment (k) or the diminution of his emoluments (l), he shall, unless provision for his compensation for that loss is made by or under any other enactment for the time being in force, be entitled to receive compensation (m therefor from the board, and for securing that the provisions of subsections

(2) and (3) of section one hundred and fifty of the Local Government Act, 1933, and of the Fourth Schedule to that Act (*n*) shall have effect for the purposes of any claim for such compensation and for the purposes of the determination and payment of the compensation, subject to such modifications and adaptations as appear to the Minister to be necessary, and

(*d*) may, with the consent of the council of any county or county borough for the area for which the board is to be the local education authority, provide for the transfer to the board of any functions exercisable by that council under the Children and Young Persons Acts, 1933 and 1938 (*o*), otherwise than as a local education authority.

4. An order constituting a joint education board shall be laid before Parliament (p) as soon as may be after it is made.

5. This Part of this Schedule applies to the council of any county (q), to the council of any county borough, and to the council of any other borough of which the population was not less than half of the population of the county in which the borough is situated, according to the last census before the passing of this Act

NOTES

The provisions of Part I of this Schedule are new to the law of education, though the Education Act, 1921, contained several sections under which co-operation could take place between local education authorities for various purposes, by combination or otherwise.

The main such provision was contained in section 6 of the Act of 1921; 7 Halsbury's Statutes 133, which authorised any council having powers under that Act to enter into such arrangements as it might think proper for co-operation or combination with any other such council or councils, for the purpose of performing any duty or exercising any power under the Act. Power was given to appoint joint committees or joint bodies of managers for the purposes concerned, to delegate any powers or duties (other than power to raise a rate or to borrow money), and to make the necessary financial and other arrangements

In addition the section authorised the Board of Education to provide by scheme for the establishment of federations of two or more such councils for the purposes of dealing with matters of common interest concerning education which it was necessary or convenient to consider in relation to areas larger than those of individual education authorities. Such schemes could, however, only be made on the application of the councils concerned, though once a scheme had been made with a council's consent the council was obliged to continue in the federation unless the scheme was modified or repealed by a further scheme.

In addition to the above mentioned provision, section 8, *ibid.*, 7 Halsbury's Statutes 134, required local education authorities for elementary education to make adequate arrangements for co-operating with local education authorities for higher education in matters of common interest.

The above-mentioned provisions are repealed by the present Act

The first part of the present Schedule is, however, intended to meet a different set of circumstances from those contemplated by Parliament in relation to the Education Act, 1921. It is recognised that, in the absence of a comprehensive scheme for the reform of local government, a simplification of the administrative system such as that carried out by section 6, p. 87, *ante*, is, as a result of the widely differing sizes and circumstances of counties and county boroughs and for other reasons, bound to create anomalies.

Provision has, therefore, been made to enable the Minister, if he thinks it desirable, to create a joint board in the circumstances mentioned in paragraph 1, *supra*, which will become the local education authority for the areas concerned Though Ministry of Education Circular 1 (15th August, 1944) stated that the Minister was about to communicate with those authorities to whose areas he proposed to apply the provisions of this Part of this Schedule, at the time of writing no public indication of the authorities concerned has been given. In consequence, attempts at prophecy are undesirable, but certain examples where there is at least a possibility of Ministerial action are bound to occur to those interested, *e g*, small counties such as Rutland and the Soke of Peterborough and small county boroughs such as Canterbury Since, by section 118, p 267, *ante*, the Isles of Scilly are to be treated for the purposes of the Act as if they were a separate county it is possible that the Minister may consider the establishment of a joint board for those isles and the county of Cornwall. It should be noted that the creation of a joint education board is not limited to the amalgamation of county and county borough authorities. Paragraph 5, in fact, enables a joint board to be created where there is within a county a non county borough whose population at the last census was not less than half the population of the county. Examples are Cambridge and Peterborough

The intention expressed in Circular 1, *supra*, arises from the fact that, in exercise of the power given to the Minister by section 108 (1), p. 250, *ante*, to require local education authorities and others to exercise, before Part II of the Act comes into operation on 1st April, 1945, any functions which become exercisable under the Act on or after that date so far as necessary or expedient for bringing Part II into operation, the Minister is required, by subsection (2), *ibid*, to constitute any joint education board essential for the initial operation of Part II.

(a) **"Local education authority"**.—See section 6, p. 87, *ante*, and, as regards the Isles of Scilly, section 118, p 267, *ante* By section 117 (5), p 266, *ante*, this Part of the Schedule does not apply to the London County Council

(b) **"Councils to whom this Part of this Schedule applies"**.—See pargraph 5 of this Part.

(c) **"The Minister may by order"**.—As to the revocation and variation of Orders and directions, see section 111, p. 254, *ante*.

(d) **"Local inquiry"**.—As to the power of the Minister to direct local inquiries, see section 93, p. 229, *ante*

(e) **"Without licence in mortmain"**.—Apart from this specific power to hold land, a licence in mortmain would be necessary under the Mortmain and Charitable Uses Act, 1888, section 1, 3 Halsbury's Statutes 385. No limit is imposed upon the amount of land which may be held for the functions of the board, though limits are usually imposed where licences in mortmain are granted See also section 87, p. 223, *ante*, regarding assurances, etc, of land for educational purposes.

(f) **" Section two hundred and ninety-three of the Local Government Act, 1933 "** —Subsection (1) of that section 26 Halsbury's Statutes 461, provides as follows —

" Where any enactment, whether passed before or after the commencement of this Act, authorises the formation by provisional order or order of a joint board or joint committee, the constituent members of which are local authorities, for the discharge of any of the functions of those authorities, the provisional order or order may apply to the joint board or joint committee, subject to any necessary modifications, any of the provisions of this Act

Provided that—

(i) the provisions of this Act enabling land to be acquired compulsorily, otherwise than by means of a provisional order, shall not be so applied ,

(ii) the provisions of this Act relating to the audit of accounts by district auditors shall not be applied to a joint board or joint committee if the whole of the constituent local authorities are councils of boroughs unless—

(*a*) all the accounts of one or more of the councils are subject to audit by district auditors , or

(*b*) the accounts of the joint board or committee would, if they had been accounts of the several councils, have been subject to district audit "

(g) **" The transfer of officers, property and liabilities "**.—See subsections (3) and (4) of section 6 p 87, *ante*, and the notes thereto regarding the above mentioned terms

(h) **" Adjustment of accounts and apportionment of liabilities "**.—See and compare section 90, p 226, *ante*, and the notes thereto

(i) **" Direct pecuniary loss "**.—See note (d) to section 98, p 235, *ante*

(k) **" Determination of his appointment "** See note (e) to section 98 p 235, *ante*

(l) **" Diminution of his emoluments "**.—See note (f) to section 98, p 235, *ante*

(m) **" Entitled to receive compensation "**.—See section 98, p 234, *ante*, and especially note (h) thereto

(n) **" Subsections (2) and (3) of section one hundred and fifty of the Local Government Act, 1933, and of the Fourth Schedule to that Act "**.—26 Halsbury's Statutes 388, 504, and see notes (k) and (r) to section 98, p 235, *ante*

(o) **" Children and Young Persons Acts, 1933 to 1938 "**.—See section 96 of the Children and Young Persons Act, 1933 26 Halsbury's Statutes 232

(p) **" Laid before Parliament "**.—Compare this requirement with the requirements of section 112, p 254, *ante*, regarding regulations made under the Act

(q) **" Council of any county "**.—See the definition of " county " in section 114 (1), p 255, *ante*, but note that by section 117 (5), p 266, *ante*, this Part of the Schedule does not apply to the London County Council

PART II

EDUCATION COMMITTEES

1. Every local education authority (a) shall, in accordance with arrangements approved by the Minister (b) establish such education committees as they think it expedient to establish for the efficient discharge of their functions with respect to education

2 Any two or more local education authorities may, with the approval of the Minister concur in establishing a joint education committee (c) for the consideration of questions of common interest to them

3 Where it appears to the Minister to be expedient that two or more local education authorities should combine for the purpose of exercising some but not all of their functions (d) with respect to education and that those authorities should establish a joint committee for that purpose, the Minister may after consultation with the authorities by order (e) establish a joint education committee of those authorities and provide for the reference to the committee of such questions relating to those functions as in the opinion of the Minister should be so referred and any such order may provide for authorising the joint education committee to exercise any of those functions on behalf of the authorities concerned and may include such incidental and consequential provisions, including provisions with respect to the appointment and functions of sub committees, as the Minister thinks desirable

4 In the following provisions of this Part of this Schedule the expression education committee ' includes a joint education committee

5 Every education committee of a local education authority shall include persons of experience in education (f) and persons acquainted with the educational conditions prevailing in the area for which the committee acts

6 At least a majority (g) of every education committee of a local education authority shall be members of the authority ,

Provided that in the case of a joint education committee, the provisions of this paragraph shall be deemed to have been complied with if the committee consists, as to more than one half of the members thereof of persons who are members of any of the authorities for which the committee is established

7 Every local education authority shall consider a report (h) from an education committee of the authority before exercising any of their functions with respect to education

Provided that an authority may dispense with such a report if, in their opinion the matter is urgent or has been sufficiently considered or reported upon by a divisional executive established under Part III of this Schedule

8 A local education authority may authorise (i) an education committee of the authority to exercise on their behalf any of their functions with respect to education except the power to borrow money or to raise a rate

9 The minutes of proceedings (k) of an education committee of the local education authority shall be open to the inspection of any local government elector (l) for the area on payment of a fee not exceeding one shilling and any such local government elector may make a copy thereof or an extract therefrom

10 Every education committee of a local education authority may, subject to any restrictions imposed by the local education authority or the order of the Minister by which the committee was established —

(*a*) appoint such sub committees (m) constituted in such manner as the committee may determine, and

(*b*) authorise any such sub committees (n) to exercise any of the functions of the committee on their behalf

11 Nothing in this Part of this Schedule shall require the reference to any education committee of a local education authority, or to any sub-committee of such a committee, of any matter which under any enactment for the time being in force (o) is referred to any committee of the authority other than an education committee

NOTES

Part II of the First Schedule replaces section 4 of the Education Act, 1921, 7 Halsbury's Statutes 132, the main requirement of which was the appointment by every council having powers under that Act of an education committee or committees constituted by a scheme made by the council and approved by the Board of Education in accordance with the provisions of the First Schedule to that Act The sole exception to this general requirement permitted authorities having higher education powers only to dispense with an education committee if they determined such a committee was unnecessary This Part of the Schedule also replaces the provisions relating to co operation between and combination of local education authorities which were contained in section 6 of the Act of 1921 7 Halsbury's Statutes 133

Education committees are no longer to be constituted by means of schemes, though joint education committees may be established by order of the Minister under paragraph 3, and the Minister's approval to the establishment of education committees is still required by paragraph 1

(a) **"Local education authority".**—See section 6, p 87, *ante*, and this Schedule As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *ante* A joint education board established under Part I of this Schedule, p 271, *ante*, is a local education authority for all the purposes of the Act including the provisions of this Part of this Schedule with regard to the establishment, etc, of education committees

(b) **"Shall, in accordance with arrangements approved by the Minister".**—This requirement replaces the requirement contained in section 4 of the Education Act, 1921, 7 Halsbury's Statutes 132, to have an education committee or committees constituted by means of a scheme made by the authority and approved by the Minister in accordance with the First Schedule to that Act, 7 Halsbury's Statutes 217 The requirement in general remains, it is merely the machinery that is changed and it would in fact appear, by virtue of proviso (*a*) to section 121, p 270, *ante*, that an education committee constituted under the Act of 1921 will, if the local education authority continues to exist under this Act also continue to exist until new arrangements under this paragraph are approved by the Minister

It may be suggested that the obligation imposed by paragraph 1 to establish such education committees as the authority thinks it expedient to establish means that the authority may, if it thinks fit, elect not to establish an education committee at all Though the paragraph imposes an obligation upon the local education authority, the words "as they think it expedient to establish" appear to prevent the Minister from enforcing the performance of the duty under section 99, p 237, *ante*, unless the paragraph can be construed as requiring the establishment of at least one education committee This is unlikely since, on the same hypothesis, it may be reasonable to suggest that the use of the plural would require the establishment of at least two such committees

It is also considered that the Minister's power to prevent the unreasonable exercise of its functions by a local education authority under section 68, p 205, *ante*, is insufficient to enable him to make use of that section where the authority does not propose to act at all, and though he may refuse to approve any proposal with which he is not satisfied, it seems that he cannot, under the Act, require the establishment of a committee if the authority does not wish to do so

The general provisions applicable to the appointment of committees of a local authority under section 85 of the Local Government Act, 1933, are by subsection (5) of that section, 26 Halsbury's Statutes 353, not applicable to committees appointed under this Act

(c) **"Joint education committee".**—This and the next paragraph replace the provisions of section 6 of the Education Act, 1921, 7 Halsbury's Statutes 132, which relate to co operation and combination between local education authorities—as to which see the general note to Part I of this Schedule, p 271 *ante* Here the Minister can require the establishment of a joint committee—see note (b), *supra*

(d) **"The purpose of exercising some but not all of their functions".**—Where the Minister considers that the authorities should combine for the exercise of all functions under the Act he will presumably constitute a joint education board under Part I of the Schedule, p 271, *ante*

(e) **"Order".**—As to the revocation or variation of such an order, see section 111, p 254, *ante*

(f) **"Persons of experience in education".**—This paragraph replaces paragraph (1) (*b*) of Part I of the First Schedule to the Education Act 1921 7 Halsbury's Statutes 217, which required that every scheme constituting an education committee should provide for the appointment by the council on the nomination or recommendation, where it appeared desirable, of other bodies (including associations of voluntary schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acted

(g) **"At least a majority".**—This paragraph replaces and in general re enacts paragraph (1) (*a*) of Part I of the First Schedule to the Education Act, 1921, 7 Halsbury's Statutes 217, whilst the proviso re enacts part of paragraph (2) *ibid* Paragraph (1) (*c*), *ibid*, also provided for the inclusion of women as well as men upon education committees. This requirement is

not repeated but the Minister may require their appointment as a condition of his approval of any proposals.

(h) **" Shall consider a report ".**—This paragraph, except as regards the reference in the proviso to divisional executives, re-enacts section 4 (2) (*a*) of the Education Act, 1921 ; 7 Halsbury's Statutes 132. The proviso enables a local education authority to discuss an educational matter in certain circumstances, even if the education committee has not reported upon it. It will not, however, enable the authority to act, except as a matter of urgency, where the subject has only been discussed by a committee or sub-committee of the executive.

(i) **" May authorise ".**—This paragraph re-enacts section 4 (2) (*b*) of the Education Act, 1921 ; 7 Halsbury's Statutes 132. As to the revocation of delegated powers and the exercise of such powers without revoking the delegation, see *Huth* v. *Clark* (1890), 25 Q.B.D. 391 ; 33 Digest 17, *68*. As to the ratification by a local authority of powers exercised without express delegation, see *Firth* v. *Staines* [1897] 2 Q B. 70 , 38 Digest 169, *130* , *Hussey* v. *Exeter Corporation* (1918), 87 L.J. Ch. 443 ; 25 Digest 133, *524* ; and *R.* v. *Chapman, Ex parte Ayrhdge* [1918] 2 K.B. 298 ; Digest Supp. As to the extent of the power of delegation, see *Richardson* v. *Abertillery U.D.C.* ; *Thomas* v. *Abertillery U D.C* (1928), 92 J.P. 59 ; Digest Supp.

(k) **" Minutes of proceedings ".**—This paragraph applies to education committees the obligation imposed regarding local authorities in general by section 283 (1) of the Local Government Act, 1933 , 26 Halsbury's Statutes 455. As to what may be inspected, see *Williams* v. *Manchester Corporation* (1897), 45 W R. 412 ; 33 Digest 55, *336*. See also Part V of the Third Schedule to the Local Government Act, 1933 ; 26 Halsbury's Statutes 500, which regulates the meetings and proceedings of local authorities in general.

(l) **" Local government elector ".**—See the definition of this term in section 114 (1), p. 255, *ante*. There have been various cases relating to the extent of the right to inspect minutes, *e.g.*, *Stevens* v. *Berwick-on-Tweed Corporation* (1835), 4 Dowl. 277 ; 13 Digest 303, *343* ; *R.* v. *Wimbledon U.D C., Ex parte Halton* (1897), 62 J.P 84 ; 13 Digest 349, *878* ; *R.* v. *Bradford-on-Avon R.D.C., Ex parte Thornton* (1908), 72 J.P. 348 ; 33 Digest 101, *884* ; and *R.* v. *Godstone Rural Council* [1911] 2 K.B. 465. As to the production of the minute book in the absence of the clerk, see *R.* v. *Andover R.D.C., Ex parte Thornhill* (1913), 77 J.P. 296 ; 33 Digest 101, *682*. The paragraph replaces section 10 of the Eduction Act, 1921 ; 7 Halsbury's Statutes 135, so far as it was not repealed by the Local Government Act, 1933.

(m) **" Appoint such sub-committees ".**—Paragraph 10 (*a*) replaces section 4 (5) of the Education Act, 1921 ; 7 Halsbury's Statutes 133.

(n) **" Authorise any such sub-committees ".**—Paragraph 10 (*b*), which gives a specific power of delegation to sub-committees, was not contained in the Education Act, 1921. Following the precedent contained in section 273 of the Public Health Act, 1936 ; 29 Halsbury's Statutes 498, this power overrides the general rule " *delegatus non potest delegare* ". No restriction is specifically placed on the membership of such sub committees, as in the case of section 273, *supra*, and local education authorities will doubtless ensure, by exercising their powers of imposing suitable restrictions, that there is a majority of members of the authority upon any such sub-committees which may incur liability to expenditure.

(o) **" Under any enactment for the time being in force ".**—See, for example, the Poor Law Act, 1930, section 4 ; 12 Halsbury's Statutes 971 (public assistance committee), the Rating and Valuation Act, 1925, section 18 ; 14 Halsbury's Statutes 642 (county valuation committee), the Mental Deficiency Act, 1913, sections 28 and 66 ; 11 Halsbury's Statutes 176, 193, and Mental Treatment Act, 1930, sections 7 and 22 ; 23 Halsbury's Statutes 163, 173 (Mental Deficiency Acts Committee), the Public Health Act, 1936, section 201 ; 29 Halsbury's Statutes 461 (maternity and child welfare committee), etc.

PART III

DELEGATION OF FUNCTIONS OF LOCAL EDUCATION AUTHORITIES TO DIVISIONAL EXECUTIVES

1. This Part of this Schedule shall not apply to any local education authority (a) which is the council of a county borough.

2. For the purpose of securing that the functions of local education authorities will be exercised with due regard to the circumstances affecting different parts of their areas and with the co-operation of persons having special knowledge of such circumstances, provision shall be made by schemes (hereinafter referred to as " schemes of divisional administration ") for partitioning the areas of authorities into such divisions as may be conducive to efficient and convenient administration and for constituting bodies of persons (hereinafter referred to as " divisional executives ") for the purpose of exercising on behalf of the authorities, in such of the divisions as may be specified in the schemes, such functions relating to primary and secondary education (b) as may be so specified :

Provided that if the Minister is satisfied with respect to the area of any local education authority that the making of a scheme of divisional administration for that area is unnecessary he may by order direct (c) that this Part of this Schedule shall not apply to that local education authority.

3. As soon as may be after the commencement of Part II of this Act (d) every local education authority to which this Part of this Schedule applies shall review the circumstances of every part of their area, and shall make such schemes of divisional administration as they consider expedient for the purpose mentioned in the last foregoing paragraph.

4. If the council of any borough or urban district (e) has, before the first day of October nineteen hundred and forty-four (f), lodged with the Minister a claim that the borough or district be excepted from any scheme of divisional administration to be made by a local education authority the Minister may direct (g) that the borough or district shall be so excepted and the Minister shall so direct if the borough or urban district fulfils either of the following conditions, that is to say :—

(*a*) that the population thereof on the thirtieth day of June nineteen hundred and thirty-nine, as estimated and certified by the Registrar General, was not less than sixty thousand , or

(*b*) that on the thirty-first day of March nineteen hundred and thirty-nine the total number of pupils (h) on the rolls of the public elementary schools (i) in the area thereof was not less than seven thousand,

so however that no such direction shall be given in the case of any borough or urban district which does not fulfil either of the said conditions unless the Minister, after consultation with the local education authority and such other councils as appear to him to be concerned (k), is satisfied that by reason of special circumstances (l) the borough or urban district ought to be so excepted. Any borough or urban district which has been directed by the Minister to be so excepted as aforesaid is in this Part of this Schedule referred to as an excepted district.

5 The council of any borough or urban district which is an excepted district shall as soon as may be after the date on which the borough or urban district became such a district make, after consultation with the local education authority, a scheme of divisional administration for the borough or district which shall provide for the exercise by the council of that borough or district of the functions thereby delegated (n) as the divisional executive for the purposes of the scheme and shall transmit the scheme to the local education authority for submission to the Minister

6. Any scheme of divisional administration shall be submitted by the local education authority to the Minister and shall not have effect until it has been approved by an order made by him (o).

7. A local education authority, before submitting to the Minister any scheme of divisional administration (whether made by them or by a council of a borough or district which is an excepted district) shall consult the council of every county district (p) in their area, and shall after such consultation serve a copy of the scheme upon each of those councils ; and before any scheme of divisional administration is submitted to the Minister the local education authority or council by whom the scheme was made shall publish such notices with respect thereto as may be prescribed (q).

8. Every scheme of divisional administration shall—

(*a*) provide for the constitution (r) of every body which is to be a divisional executive for the purposes of the scheme, except where the schemes provide for the functions thereby delegated being exercised by the council of a borough or urban district as the divisional executive ;

(*b*) define the functions which the several divisional executives specified therein, or in the case of a scheme for an excepted district the divisional executive, are thereby authorised to exercise on behalf of the local education authority ;

(*c*) specify any conditions subject to which any divisional executives are so authorised ;

(*d*) make such provision as may be expedient for empowering such executives to appoint committees and sub-committees and as to the matters to be referred to them ;

(*e*) define the relationship between any such executive committee, or sub-committee, and the local education authority and committees and sub-committees thereof ;

(*f*) provide for the determination by the Minister of any disputes (s) between the local education authority and any divisional executive ;

(*g*) make provision for the submission to the local education authority, by every divisional executive thereby authorised to exercise functions, of estimates of expenditure intended to be incurred by the executive on behalf of the authority and of accounts of expenditure so incurred ; and for requiring such estimates and accounts to be subject to the approval of the authority ,

(*h*) provide for such other matters as appear to the local education authority or council by whom the scheme is made to be expedient, or as the Minister may require :

Provided that no such scheme shall authorise any divisional executive to borrow money or to raise a rate.

9. If on the application of any local education authority, or of the council of any borough or urban district which is an excepted district, the Minister is satisfied after consultation with the local education authority in cases where the application is made by the council of an excepted district that it is expedient that any functions under this Act relating to further education (t) should be exercised on behalf of the authority by a divisional executive, the Minister may direct that provision for that purpose may be made by a scheme of divisional administration, and where a direction is so given for the delegation to any such executive of functions relating to further education, this Part of this Schedule shall apply in respect of the delegation to that executive of the functions specified in the direction, in like manner as it applies in respect of the delegation of functions relating to primary and secondary education

10. After considering any objections to a scheme of divisional administration made to him within the period of two months from the date on which the prescribed notices with respect to the scheme were published, and after making in the scheme such modifications, if any, as after consultation with the local education authority he considers expedient, the Minister shall make an order approving the scheme.

11 Any power conferred by this Part of this Schedule on a local education authority or council to make and submit to the Minister schemes of divisional administration shall be construed as including power to submit schemes for the variation or revocation of any such scheme previously made by that authority or council and if at any time the Minister is of opinion that any such scheme ought to be varied or revoked or that a further scheme of divisional administration ought to be made by any such authority or council he may direct them to make such a scheme and submit it to him

12 If the population of any borough or urban district which is an excepted district is according to any census taken after the passing of this Act (u) less than sixty thousand the Minister shall if after consultation with the local education authority he is of opinion that the borough or urban district ought no longer to be an excepted district, give such directions as he thinks proper under the powers conferred on him by the last foregoing paragraph

13 The minutes of the proceedings (x) of a divisional executive shall be open to the inspection of any local government elector (y) for the area of the local education authority on payment of a fee not exceeding one shilling and any such local government elector may make a copy thereof or an extract therefrom

NOTES

In considering the system created by this Part of the Schedule, which is new to the administrative system of education, particular regard must be had to the changes made in the structure of local administration by section 6, p 87, *ante*, which abolishes all education authorities except the councils of counties and county boroughs The county boroughs are, of course, in general not affected by these changes unless in a particular instance the Minister decides that the council of a county borough shall become one of the constituent authorities of a joint education board under Part I of this Schedule, p 271, *ante*, and, in consequence, the provisions of this Part of the Schedule do not apply to local education authorities which are councils of county boroughs The notes to section 6 p 87, *ante*, deal with the general reasons for and questions arising out of the altered local education authorities

The provisions of this Part of the Schedule deal with more detailed matters within the general framework, and underwent considerable change between the publication, in July, 1943, of the White Paper on Educational Reconstruction (Cmd 6458 of 1943) and the passing of the Act One of the principles there regarded as fundamental to any review of the units of educational administration was that any scheme for the constitution of local education authorities must be such as to preserve and stimulate local interest in educational affairs As to this the White Paper stated (at p 30) —

> It is therefore proposed to require county authorities to prepare schemes for the constitution and functions of district education committees For this purpose, the county will be divided into areas, each area consisting of one or more county districts, provided that any county district with a minimum total population of 60,000, or a minimum elementary school population of 7,000 children, will have the right to have a separate district committee for its area District committees will be entrusted with the general duty of keeping the educational needs of the area under review and making recommendations to the county education committee, and with such other functions as may be delegated to them by the county education committee Some county authorities, realising the advantages of relying on local knowledge and interest, already delegate many functions to local committees both in respect of elementary and higher education Under the arrangements proposed it will be open to district committees to make representations to the Board if they are dissatisfied with the extent of the delegation to them proposed by the county education committee This system of district committees will not be confined to the areas of the present Part III authorities, but will cover the whole of the administrative area of the county Local interest in educational affairs will, therefore, not only be maintained in the areas where it exists at present, but will be stimulated and extended over a much wider field "

These proposals did not provide much comfort for those Part III authorities whose functions were to be transferred entirely to the county authorities, and who, in some instances, could legitimately claim to have provided, within the limits of their powers, a better education service at a lower cost than had the county authority to which their functions were to be transferred Though it is true to say that some county councils had already seen the wisdom of delegating many of their educational functions to local committees the majority had not and Part III authorities with that experience and experience of the similar attitude adopted by some county councils in other spheres of local government, were naturally suspicious of a proposal which would entirely deprive them of any effective voice in educational matters with no guarantee of an improved service Though some authorities may have adopted a parochial attitude it was generally recognised that any change in the administrative system must provide for all educational functions to be discharged by a single authority, but many of the larger Part III authorities felt entitled to claim that they could discharge those functions better than could the county councils Numerous representations were made to the Board of Education by individual authorities as well as by the associations of local and education authorities It is unnecessary to refer to these negotiations in detail and it suffices to say that the President of the Board remained adamant on the general principle that the administrative structure was to be simplified by the abolition of Part III authorities, maintaining that, though such a simplification admittedly created further anomalies, their solution was a matter for consideration in connection with the general structure of local government and not one for an Education Bill On the matters of detailed administration he was, however, prepared to go some way to meet his critics Accordingly, when the Bill was published it was found that the proposed district education committees had been superseded by proposals to constitute divisional executives in each county by means of schemes of divisional administration The Explanatory Memorandum issued with the Bill in December, 1943 (Cmd 6492 of 1943) explained this proposal at p 3 —

> In order to evoke and maintain local interest in education in the county districts, provision is made in the First Schedule, Part III, for a system of delegation of the functions of the county local education authorities This system, which has been devised after

discussions on the White Paper proposals with representatives of the local authorities, has the following new features Instead of the proposal that district committees should be entrusted with the general duty of keeping the needs of their areas under review and of making recommendations to the county education committee, there is substituted a system of delegation of functions to divisional executives representing individual county districts or groups of them While the scope of delegation may vary according to circumstances, these delegated functions will normally extend to the administration of primary and secondary education and, where there is a sufficient aggregation of population, may also include further education Schemes for the delegation of these functions will, subject to what is said in the following paragraph, be prepared by the county councils after consultation with the county district councils, and the latter councils will have the right to make representations to the Minister, who may make such modifications in the schemes as he considers expedient

Boroughs and urban districts with a population according to the last census before the passing of the Act of not less than 60,000 or a public elementary school population on the 31st March, 1939, of not less than 7,000, may, if they so desire, be excepted from the scheme prepared by the county council and prepare their own schemes of delegation in respect of primary and secondary education and submit them to the Minister though the county council

In all cases the power to borrow money or to raise a rate is reserved to the local education authority The divisional executives will, however, prepare and submit their own annual estimates of expenditure to the local education authority Provision for this and other administrative arrangements is made in Part III of the First Schedule

The system of divisional executives will not necessarily cover the whole of a county council's area Parts of the county may continue to be administered direct by the county education committee ".

In spite of this gesture by the President of the Board, the Part III authorities and many members of Parliament were still dissatisfied, and a serious attempt might have been made to persuade the Government to give way on major issues had it not been for the one vote defeat of the Government in Committee on an amendment to what is now section 89, p 225, *ante*, and the subsequent decision to treat that and all similar questions as votes of confidence in the Government It seemed, however that little would be gained except by negotiation, and the fruits of this became apparent on consideration of the First Schedule during the Committee and later stages of the Bill in the Commons In making further concessions, several authoritative statements were made which merit recording, having regard to the questions which are likely to arise in connection with the establishment and definition of the functions of divisional executives

In particular, paragraph 4 of this Part of the Schedule was substituted for a paragraph having a more limited effect (see the second paragraph of the quotation from the Explanatory Memorandum, *supra*) and, in moving the substitution, the Parliamentary Secretary to the Board gave the following information to the House —

" Under the original paragraph 4 a very limited number of authorities of county districts were given the right to claim to be excepted districts Two criteria were set out, the first that the district had a population at the last census of not less than 60,000, and secondly that it had at 31st March, 1939, 7,000 school children on the rolls of its elementary schools If a district was not qualified by one or other of those conditions it was precluded from becoming an excepted district In the first place it is quite clear that a considerable change of population has occurred between the census of 1931 and the outbreak of war in 1939 Therefore, one of the alterations that we introduce is set out in paragraph (*a*) of the new paragraph 4, where we set the standard for population as that estimated and certified by the Registrar General on 30th June, 1939 that is as near as we can get to the population figure at the commencement of the war Quite clearly, to take estimates that have been made during the war would be to inflict injury on some districts whose population may have fallen as a result of the war, and might bring in other districts the population of which has been inflated purely temporarily during the war Therefore we have endeavoured to bring the population basis up to date

We do not, under the new paragraph limit the right to be an excepted district to those who satisfy those two conditions What we do under this paragraph is to enable the council of any borough or urban district, before 1st October next, to lodge a claim that it shall be an excepted district, and if my right hon Friend is satisfied that by reason of the special circumstances of the district it ought to be an excepted district, although it does not reach the standard population, or did not have 7,000 children in its elementary schools on 31st March, 1939, it may become an excepted district I think that is a reasonable way to meet the needs of particular areas as the population of this country is spread so unevenly over the surface of the country, because it is very difficult even to do rough justice by any standard that is set down in the Bill "

In answer to questions it was stated that the criteria which would have to be applied would be the ability of the district to have a reasonably self contained education service for both primary and secondary education, whilst the past record of the authority, favourable or unfavourable, would also be taken into account In explanation of the word " self contained " the Parliamentary Secretary said —

" Here, again, we desire to have a flexible instrument, but let us take the position where a particular county district has a substantial population and is supplying a majority—though I would not even be bound by that—let us say a substantial minority, in the secondary schools of the borough or urban district, with others coming in from surrounding villages It might then be desirable, if the central borough or urban district is made an excepted district, that representation should be given on its education committee to the surrounding districts, by members either being co opted by the borough or urban district, or nominated either by the county council or the councils which govern the villages on the periphery of the excepted district We desire that to enable a very substantial amount of delegation to be given to the councils of those districts which qualify under the new Amendment, and I very sincerely hope that the representatives of those councils in their own areas will recognise that this is an opportunity we afford them of making a quota towards educational life in the future I wish to make it quite clear that this is not confined to county district councils which

were Part III authorities Those places which have grown up since 1902, and were not qualified in 1902, but which can prove that they have a case for being made an excepted district, will be able to submit their claim The fact that they have no record on which to base it may even tell in their favour on occasion "

One further question of importance was raised in relation to this paragraph namely, whether it would be possible for a group of councils to come together and so obtain the requisite population figure In reply the Parliamentary Secretary reminded the House that they were discussing excepted districts, where the local authority i e , the local borough or urban district council, as the case might be, would become the divisional executive, and said —

' There is no device known to law whereby two or three such authorities can meet together to take on the kind of powers that are delegated under this paragraph If the central district concerned is a comparatively large and populous one, and the surrounding districts that wish to come in are comparatively small, there might be an arrangement whereby the education committee of the larger area should include members nominated by the small areas In that case the council for the larger area would be the council of an excepted district, with the status that that gives If that is an unwise procedure, the three or four councils concerned may nominate members, in some proportion to be agreed in the county scheme, and these members will meet to form the divisional executive In one or other of these ways it will be possible for contiguous districts to set up a divisional executive which will be able to administer such education functions as are delegated to the executive for the area of all the authorities concerned "

Pressed on this point, he added —

" There is no limitation, as far as I know, in paragraph 2 of this part of the Schedule, on the way in which a divisional executive can be constituted so as to give adequate representation to such number of councils as may desire to be included in it The only point that remains is the question of the voluntary arrangement The duty is laid on the county council of consulting all the county district councils concerned If the county scheme does not accord with their wishes—and, after all, there would be a desire, I imagine, that, as far as possible, it should be arranged by agreement—they can approach the Minister, and suggest that they have a better way of dealing with their particular area than the way inserted by the county council in the scheme "

Ministry of Education Circular 1 (15th August, 1944) deals with a number of matters in relation to which local education authorities may find it necessary to take action before the coming into operation of Part II of the Act on 1st April, 1945, or in relation to which the Minister may require them to take action under section 108, p 250, *ante* The circular states (*inter alia*) that, in the exercise of his powers under section 108 *supra*, the Minister proposes to require those local education authorities to whom this Part of this Schedule will apply to proceed with the preparation of schemes of divisional administration

In furtherance of a promise to provide for the use of local education authorities a memorandum setting out the considerations to be borne in mind in the preparation of schemes of divisional administration, the Minister issued to local education authorities a lengthy memorandum (Circular 5) on 15th September, 1944, of which the following is a brief paraphrase —

I.—Introduction.

After referring to the applicable provisions of the Act, the Circular indicates that the adjustments necessary to establish a satisfactory scheme of divisional administration will call for a large measure of good will The Minister expresses confidence that all the local authorities concerned will be anxious to work out in a spirit of the fullest co operation the administrative organisation best adapted to the varying needs of their areas, and thus establish a sound foundation for the many developments for which the Act provides

No hard and fast model scheme is laid down, for the consequent uniformity would be irreconcilable with the wide differences in the circumstances and requirements of different areas , the memorandum contains a statement of general principles and some guidance as to the considerations to which regard should be had in framing schemes

II.—Establishment of Divisional Executives.

Schemes are not necessarily contemplated for every county, for the total population may be small or thinly spread The ultimate decision on this point rests with the Minister In some instances a scheme may cover only part of a county, the rest being administered directly by the authority

The selection of areas for the establishment of divisional executives must be based upon a population sufficient to constitute a reasonable educational unit for both primary and secondary education, possessing sufficient community of interest (or prospects of developing it before long), and a conveniently accessible administrative centre The area, however, should not be so large as to prejudice the value of local knowledge and interest which the scheme is designed to secure Though the population criterion of 60,000 entitling a borough or urban district to be an excepted district is not necessarily appropriate, an area with a much lower population will not usually form a suitable unit unless these are special geographical considerations

Occasionally a district having a prescriptive right to be an excepted district may forego its right and combine with adjoining districts to form a divisional executive In such cases it would be proper to safeguard the interests of the district by, for example, permitting the district to prepare the scheme of delegation in consultation with the local education authority

III.—The Constitution of Divisional Executives.

In excepted districts the borough or urban district council will be the divisional executive, but the local education authority s scheme may also provide for the functions delegated to a divisional executive of a borough or urban district which is not excepted to be exercised by the council of that district In other cases the special constitution of divisional executives will be necessary the suggested composition being—

(*a*) representatives of the local education authority,

(*b*) nominees of the district councils wholly or partly within the divisional area, and

(*c*) other persons of experience in education and persons acquainted with the area's needs *e g* , representatives of industry and agriculture

The importance of including women is stressed

To secure the objects of the scheme the members nominated by the county district councils should be in a majority, whilst their proportionate representation might be determined on a population basis

A membership of between 20 and 30 is recommended as being ordinarily suitable.

Provision regarding various matters of detail, such as the members' term of office, disqualifications for office, etc., will have to be made, and guidance is available in the relevant provisions of the Local Government Act, 1933. Reference is made to the eligibility for appointment of local authorities' employees, including teachers.

IV.—Appointment of committees and sub-committees.

Where the executive is a borough or urban district council, an education committee should be appointed. Suggestions are made as to its membership. Otherwise executives might be empowered to appoint committees and sub-committees as they think fit.

V.—The Proceedings of Divisional Executives.

It will be necessary to make provision in schemes of divisional administration with regard to meetings and proceedings, and, in particular, with regard to annual and other meetings, election of chairman and vice-chairman, standing orders, the application of the Local Government Act, 1933, section 76, relating to interest in contracts, and the keeping of minutes. The relevant provisions of the Local Government Act, 1933, are suggested either for adaptation or for incorporation by reference. Provision for the admission of the press to meetings of divisional executives is recommended.

VI.—Division of Functions between Local Education Authority and Divisional Executives.

The essence of every scheme is to define the functions of divisional executives and their relationship to the local education authority. Some powers and duties are vested by statute in managers and governors, and others may be delegated under rules of management or articles of government. Similarly, certain functions, *e.g.*, the power to borrow money or to raise a rate and, by implication, the ultimate approval of expenditure, the responsibility for the development plan for the area as a whole and the responsibility for formulating the educational policy of the area, must remain with the local education authority. Thus the authority must retain the ultimate right of approval of proposals for new schools or major alterations, though some degree of delegation may be appropriate. Other matters, *e.g.*, arrangements for conveyance, or for school meals, may appropriately be delegated subject to regulations designed to secure reasonable uniformity throughout the area.

Instruments of management and government should be made by the authority in consultation with the executives, and model rules of management and articles of government issued after consultation.

The nature and degree of delegation of the many remaining functions will vary according to local circumstances. Such functions will be of two kinds, executive and advisory. The Circular suggests as appropriate for delegation the following functions :—

(1) The assessment and review of the educational needs of the divisional area ;
(2) The care and use of school premises ;
(3) the requisitioning of school supplies ;
(4) various matters relating to the work of the schools ;
(5) the enforcement of school attendance and arrangements regarding admissions, transfers and transport of pupils, etc
(6) various matters relating to pupils' welfare, including medical inspection and treatment, *the supply of school meals and milk, and of clothing and footwear, the award of* travelling and maintenance allowances, etc.

VII.—Functions under other Acts.

The delegation by a scheme under the Act of functions under other Acts such as the Children and Young Persons Acts, 1933, and the Unemployment Insurance Act, 1935, would not be appropriate.

VIII.—Administrative Co-operation.

The success of the arrangements will depend upon co-operation between the authority and the executive, fostered by providing ample opportunities for consultation before decisions are taken. Arrangements for the exchange of views are highly desirable. Divisional executives should, therefore, have the right to make representations on matters not delegated and the duty to consider representations made by the local education authority, and to furnish any statistics and records which the authority may require

The fullest contact should be maintained between the chief education officer and the *divisional education officer* and advice should be available to the executive from all departments of the county council.

IX.—Appointment and Dismissal of Staff.

(1) Administrative and Other Non-teaching Staff.

The executive's staff will be legally in the employment of the local education authority, who will therefore exercise some degree of control. Opportunities of promotion and transfer should be available throughout the authority's area.

Every executive should have a suitable education officer and both the authority and the executive should be associated in his appointment. The Circular outlines the functions of such an officer.

The local education authority will appoint the county school medical officer, and the medical, dental and nursing staff throughout the county will be under his general control. Both the authority and the executive should, however, be associated in the appointment of assistant school medical officers, school dentists and nurses, though their dismissal should rest with the authority.

Subject to conditions, the appointment and dismissal of other staff might be delegated to the divisional executive.

(2) Teaching Staff.

The Circular first sets out the statutory position with regard to the appointment and dismissal of teachers in the various classes of schools and sets out certain general considerations before making detailed suggestions dealing with the appointment of teachers, under the headings of primary and secondary schools (county and voluntary), sub-divided as regards assistant masters and mistresses and head masters and head mistresses respectively, and with the dismissal of teachers in all primary and secondary schools.

Separate reference is made to the appointment and dismissal of teachers in day special schools and nursery schools maintained by local education authorities.

X.—Appointment of Managers and Governors.

The Circular suggests that an agreed proportion of the local education authority's representatives on the managing and governing bodies of county and voluntary primary and secondary schools should be nominated by divisional executives.

XI.—Further Education.

Paragraph 9 of this Part of the Schedule authorises the delegation to a divisional executive of functions relating to further education. In general, delegation of responsibilities in respect of major technical and similar institutions will not be appropriate, though this course may be desirable in respect of other functions, including the Youth Service, local evening institutes and, in due course, county colleges.

XII.—Finance.

Subject to the retention of ultimate financial responsibility, schemes may provide for varying degrees of delegation of financial responsibility and the Circular makes various detailed suggestions.

XIII.—*Determination of Disputes.*

Every scheme must provide for the determination of disputes and each party should have the right to refer the dispute to the Minister for a final decision.

XIV.—Publication of Schemes.

The Circular stated that Draft Statutory Rules and Orders relating to the notices to be issued about schemes of divisional administration were in course of preparation—and a Draft of the Schemes of Divisional Administration (Notices) Regulations, 1944, was issued on 21st September, 1944.

Appendix.—Communications with the Ministry.

An Appendix to the Circular deals with the question of the access of divisional executives to the Ministry. In general, the Minister states that correspondence must be conducted between the Ministry and the local education authority, subject, however, to an exception in the case of excepted districts and of divisional executives including a borough or urban district which has waived its right to be an excepted district, on matters relating to delegated functions. Detailed instructions may be issued later in the light of experience.

(a) **" Local education authority ".**—See section 6 and Part I of this Schedule, pp. 87 and 271, *ante*. As to the application of the Act to the Isles of Scilly, see section 118, p. 267, *ante*. By section 117 (5), p. 266, *ante*, this Part of this Schedule does not apply to the London County Council. In addition, by the proviso to paragraph 2, the Minister may direct that this Part shall not apply in the case of other local education authorities if he is satisfied that schemes of divisional administration for their areas are unnecessary.

(b) **" Primary and secondary education ".**—By section 114 (1), p. 255, *ante*, these terms are given the meanings respectively assigned to them by section 8, p. 97, *ante*; see paragraphs (*a*) and (*b*) of subsection (1) thereof.

(c) **" He may by order direct ".**—As to the revocation and variation of orders and directions, see section 111, p. 254, *ante*. The power possessed by the Minister under that section means that if he is subsequently led to reconsider the matter, as a result of representations or otherwise, he may revoke or vary his earlier order whereupon the obligation to prepare schemes will fall upon the local education authority concerned. As to the enforcement of directions, see *section 99*, p. 237, *ante*.

(d) **" The commencement of Part II of this Act ".**—By section 119, p 267, *ante*, Part II comes into operation on 1st April, 1945, but under section 108, p. 250, *ante*, the Minister may exercise, and may authorise or require others to exercise, before that date, any functions exercisable under the Act so far as necessary or expedient for securing that that Part may be brought into operation without delay or for preventing difficulties in its operation after that date. In exercise of that power the Minister is required (*inter alia*) to secure the constitution of any divisional executives which are, in his opinion, essential for the initial operation of Part II of the Act.

(e) **" Any borough or urban district ".**—Unlike the term " county ", these expressions are not defined in the Act. By section 1 of the Local Government Act, 1933; 26 Halsbury's Statutes 306, " for the purposes of local government " (*inter alia*), administrative counties are divided into county districts, being either non county boroughs, urban districts and rural districts and the terms therefore have the same meaning as in that Act.

(f) **" First day of October nineteen hundred and forty-four ".**—This paragraph has had only a very limited life. Failure to lodge a claim under the paragraph, however, does not prevent a borough or urban district council from making objections to a proposed scheme of divisional administration under paragraph 10 or from making representations at any time to the Minister under paragraph 11.

(g) **" The Minister may direct ".**—See note (c), *supra*.

(h) **" Pupils ".**—This term is defined in section 114 (1), p. 255, *ante*.

(i) **" Public elementary schools ".**—This term refers to schools which were public elementary schools for the purposes of the Education Acts, 1921-1939, see section 27 of the Education Act, 1921; 7 Halsbury's Statutes 142.

(k) **" Such other councils as appear to him to be concerned ".**—The question whether a particular borough or urban district should be an excepted district or not may well affect the arrangements for establishing divisional executives in other parts of the county and the Minister may, therefore, interpret this phrase fairly widely.

(l) **" Special circumstances ".**—This term is not defined in the Act but a valuable indication of the policy to be adopted by the Minister was given in the House of Commons during the Committee stage of the Bill, see the general note, *supra*.

(n) **" Functions thereby delegated ".**—The matters to be included in a scheme are listed in paragraph 8. The only functions which may not be delegated by a scheme are the local education authority's powers to borrow money or to raise a rate, though certain other functions obviously cannot be delegated, e.g., the appointment, under section 88, p. 225, *ante*, of a chief education officer of the authority. See also the references to Ministry of Education Circular 5 (15th September, 1944) referred to in the general note, *supra*.

(o) **" An order made by him ".**—As to the making of this order, see paragraph 10, and as to the variation or revocation of it, see, in addition to section 111, p. 254, *ante*, paragraph 11.

(p) **" County district ".**—See note (l), *supra*.

(q) **" Such notices with respect thereto may be prescribed ".**—By section 114 (1),

p. 255, *ante*, " prescribed " means prescribed by regulations made by the Minister ; as to the making of regulations, see section 112, p. 254, *ante*.

(r) **" Constitution ".**—No power is given to constitute the divisional executive as a body corporate so as to enable it to hold land. It would appear therefore that normally any dealings in land will have to be carried out in the name of the local education authority. This restriction upon the powers of divisional executives does not in law apply in the case of excepted districts. In the case of urban districts the council itself is a corporate body and may hold land. There is a distinction in the case of boroughs, where the inhabitants are incorporated and not the council. For this purpose, however, it is a distinction without a difference—see section 17 of the Local Government Act, 26 Halsbury's Statutes 313, and Macmillan's Local Government and Administration, Vol. 13, p. 259, Title " *Ultra Vires* "—and the council of the borough is, therefore, in the same position as an urban district council.

(s) **" Determination by the Minister of any disputes ".**—The simplest method of complying with this paragraph will presumably be to apply the provisions of section 67, p. 203, *ante*.

(t) **" Further education ".**—By section 114 (1), p. 255, *ante*, this term has the meaning assigned to it by section 41, p. 164, *ante*

(u) **" Any census taken after the passing of this Act ".**—Section 296 (2) of the Local Government Act, 1933 ; 26 *Halsbury's Statutes 463*, provides that for the purposes of that Act and of any enactment passed after the commencement thereof relating to local government, references to the last published census are to be construed, as regards any local government area, as references to the last census in respect of which the Registrar-General has, in pursuance of the Act under which the census was taken, published a report giving the population of that area, not being a report which is, or purports to be, of a provisional nature.

(x) **" The minutes of the proceedings ".**—See note (k) to Part II of this Schedule, p. 275, *ante*.

(y) **" Local government elector ".**—See note (l) to Part II of this Schedule, p. 275, *ante*.

Section 13.

SECOND SCHEDULE

TRANSFER TO A LOCAL EDUCATION AUTHORITY OF AN INTEREST IN THE PREMISES OF A VOLUNTARY SCHOOL

1. A local education authority (a) and the managers or governors (b) of any voluntary school (c) maintained (d) by the authority may, subject to and in accordance with the provisions of this Schedule, make an agreement (e) for the transfer to the authority of any interest in the school premises (f) held by any persons for the purposes of any trust deed (g) relating to the school.

2. No such agreement shall take effect unless it has been approved by the Minister.

3. The Minister shall not approve any such agreement unless he is satisfied—

(*a*) that due notice of the agreement has been given (h) to any persons other than the managers or governors of the school who, by virtue of any trust deed relating to the school, have an interest therein and to any other persons who appear to the Minister to be concerned ; and

(*b*) that the execution of the agreement will effect the transfer of all interests necessary for the purpose of enabling the authority to maintain the school as a county school

4. Before approving any such agreement, the Minister shall consider any representations made to him by or on behalf of any persons appearing to the Minister to be concerned with the proposed transfer

5. An agreement under this Schedule may provide for the transfer to the authority, subject to such conditions, reservations and restrictions, if any, as may be specified in the agreement, of the whole of the interest in the premises held by any persons for the purposes of any trust deed relating to the school, or of any less interest in the premises, and may include such other provisions, whether relating to the consideration for the said transfer or otherwise, as may be agreed upon between the authority and the managers or governors of the school.

6. Where any agreement made under this Schedule has been approved by the Minister, the managers or governors of the school may, whether or not the interest to be transferred to the authority by virtue of the agreement is vested in them, convey that interest to the authority.

7. Where any person other than the managers or governors of the school has a right to the occupation or use (i) of the school premises or any part thereof for any particular purpose, no provision of any agreement made under this Schedule shall affect that right unless he has consented thereto.

8. In this Schedule, the expression " premises " (k) includes a teacher's dwelling-house.

NOTES

This Schedule arises out of subsections (1) (*b*) and (4) of section 13, p. 109, *ante* (see the notes to that section), and replaces the Fourth Schedule to the Education Act, 1921 ; 7 Halsbury's Statutes 221, which related to transfers and re-transfers of schools under sections 38 and 39 of that Act ; 7 Halsbury's Statutes 151. As to the transfer of endowments for educational purposes, see sections 85 and 86, pp. 221 and 222, *ante*.

The use of section 38 of the 1921 Act and the Fourth Schedule thereto was only necessary in the absence of other powers for the trustees to effect the transfer. By the proviso to section 13 (4), p. 109, *ante*, however, resort to an agreement made and approved under this Schedule is essential, but certain and often difficult questions as to the necessity of obtaining consents under the Charitable Trusts Acts will thereby be avoided.

Any school transferred under this Schedule must thereafter be maintained as a county school (subsections (1) (*b*) and (5) of section 13, *ante*).

There has been a number of cases decided upon the construction of or otherwise relating to the provisions replaced by this Schedule or earlier equivalent provisions which may still have some relevance; see, for example, *Re Burnham National Schools* (1873), L.R. 17 Eq. 241, 8 Digest 374, *1824*; *London School Board* v. *Faulconer* (1878), 8 Ch.D. 571; 19 Digest 563, *57*; *National Society* v. *London School Board*; *A.-G.* v. *English* (1874), L.R. 18 Eq. 608; 19 Digest 561, *40*; and *Llanbadarnfawr School Board* v. *Charitable Funds (Official Trustees of)* [1901] 1 Q.B. 430; 19 Digest 564, *59*.

(a) **"Local education authority".**—See sections 6 and the First Schedule, pp. 87 and 271, *ante*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *ante*.

(b) **"Managers or governors".**—See note (d) to section 17, p. 122, *ante*. It will be noted that the persons who may enter into the arrangement are the managers or governors of the school, and not the foundation managers or governors (as defined in section 114 (1), p. 255, *ante*, or the persons holding the legal estate in the school premises. In the case of controlled schools it will often happen (see sections 18 and 19, pp. 127 and 129, *ante*) that a majority of the managers or governors is appointed by the local education authority, which might, by making suitable appointments, find a simple method of effecting a transfer of such controlled schools to the authority. The Minister will no doubt exercise his powers under this Schedule to ensure that no unfair advantage of this opportunity is taken by local education authorities.

(c) **"Voluntary school".**—See section 9 (2), p. 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p. 113, *ante*.

(d) **"Maintained".**—By section 114 (1), p. 255, *ante*, "maintain" in relation to a school has the meaning assigned to it by subsection (2) of that section.

(e) **"Make an agreement".**—*Presumably, if an authority proposes to maintain a* voluntary school as a county school under section 13 (1) (*b*), p. 109, *ante*, and is unable to reach agreement with the managers or governors, the matter may be referred to the Minister as a dispute under section 67 (1), p. 203, *ante*.

(f) **"School premises".**—By section 114 (1), p. 255, *ante*, the word "premises" in relation to any school includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house. By paragraph 8, however, the word as used in this Schedule does include a teacher's dwelling-house.

(g) **"Trust deed".**—Section 114 (1), p. 255, *ante*, provides that this term in relation to any voluntary school includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under this Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof.

(h) **"Due notice of the agreement has been given".**—As to the service of notices, see section 113, p. 254, *ante*.

(i) **"A right to the occupation or use".**—See section 22, p. 133, *ante*.

(k) **"Premises".**—See note (f), *ante*.

Section 15

THIRD SCHEDULE

SPECIAL AGREEMENTS IN RESPECT OF CERTAIN VOLUNTARY SCHOOLS

1. Where proposals for the establishment of a school or for the alteration (a) of the premises (b) of a school have been submitted to a former authority (c), within the time limited by subsection (2) of section eight of the Education Act, 1936 (d), with a view to the making of an agreement under that section, but the said proposals have not been carried out before the date of the commencement of Part II of this Act (e) a local education authority (f) shall have power to make an agreement in accordance with the provisions of this Schedule in respect of those proposals or in respect of any revised proposals submitted to the authority in accordance with those provisions:

Provided that no such agreement shall have effect unless it is approved by the Minister, and no such agreement shall be made or approved unless the authority and the Minister are satisfied that the performance thereof will facilitate the execution of provisions relating to school accommodation for senior pupils (g) contained or proposed to be contained in the development plan (h) for the area.

2. If upon the application of any persons interested in any such proposals the Minister is satisfied that by reason of the passing of this Act or the making of any regulations thereunder, or by reason of movement of population or of any action taken or proposed to be taken under the enactments relating to housing or to town and country planning (i), or by reason of war damage (k) it is desirable that the proposals should be revised, the Minister may give directions (l) authorising a local education authority, in lieu of making an agreement in accordance with the provisions of this Schedule with respect to those proposals, to make such an agreement with respect to any revised proposals submitted to the authority before the expiration of such period as may be specified in the directions, being proposals which appear to the authority to serve substantially the same purpose as the proposals originally submitted.

3 No agreement shall be made under this Schedule after the expiration of six months or such extended period as the Minister may in any particular case allow from the date upon which the local education order (m) for the area of the local education authority first comes into force.

4 Any such agreement shall provide for the making of a grant by the local education authority to persons specified in the agreement in consideration of the execution by those persons of the proposals to which the agreement relates.

5 The amount of the grant to be made in pursuance of any such agreement shall not be less than one half or more than three quarters of the cost of executing the proposals to which the agreement relates

6 Where the agreement relates to proposals for the establishment of a school submitted to the local education authority for the County Borough of Liverpool, the authority may, if the agreement so provides, discharge their liabilities under the agreement by providing premises for the school and executing a lease of those premises to such persons as may be specified in the agreement for the purpose of enabling a voluntary school (n) to be conducted thereon

Any such lease shall provide for the reservation of a yearly rent of an amount not less than one nor more than two per cent of the cost incurred by the authority in providing the premises for the school

7 Any agreement made under this Schedule may provide for the giving of religious instruction (o) in the school in accordance with the provisions of the trust deed (p) relating to the school or where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a voluntary school, and for the employment in the school, for the purpose of giving such religious instruction, of such number of reserved teachers (q) as may be specified in the agreement.

8 Any agreement made by a local education authority under this Schedule may be varied by a further agreement between the authority and the managers or governors of the school to which the agreement relates or in such other manner, if any, as may be specified in the agreement

9 Where a grant has been made in respect of any school in pursuance of an agreement made under this Schedule the managers or governors of the school may, at any time while the school is a special agreement school, repay the grant to the local education authority by which the school is maintained

10 Where an agreement has been made under this Schedule in relation to any school, then until the proposals to which the agreement relates have been carried out, the provisions of this Act (r) relating to the respective obligations of the managers or governors of voluntary schools and the local education authority in respect of repairs and alterations to the premises of the school shall not have effect in relation to that school but the respective obligations of the managers or governors of the school and the local education authority in relation to those matters shall be such as may be determined by agreement between the managers or governors and the authority, or in default of such agreement, by the Minister

11 Where any local authority have before the date of the commencement of Part II of this Act, made an agreement under the powers conferred by section eight of the Education Act, 1936 with respect to proposals submitted to the authority within the time limited by subsection (2) of that section, then —

(*a*) if the said proposals have been carried out before that date the agreement shall be deemed to have been made under this Schedule, and the provisions of this Act relating to special agreements shall have effect accordingly ;

(*b*) if the said proposals have not been carried out before that date, the agreement shall cease to have effect, but without prejudice to the making of a further agreement, under this Schedule with respect to those proposals or with respect to any revised proposals submitted to the authority in accordance with the provisions of this Schedule

NOTES

This Schedule replaces the provisions of sections 8 and 9 of the Education Act, 1936, 29 Halsbury's Statutes 123, 125 Special agreement schools, which are a limited class of school and were first created under the Act of 1936, form one of the three categories of voluntary schools referred to in section 15 (1), p 113, *ante* Subsection (2) of that section (*inter alia*) enables the Minister, upon application being duly made to him under the section, to direct that a voluntary school shall be a special agreement school, provided that—

(*a*) he is satisfied that the managers or governors of the school are able and willing with the assistance of the maintenance contribution payable by the Minister under section 102, p 242, *ante* to defray the expenses falling to be borne by them under section 15 (3) (*a*), p 113, *ante* , and

(*b*) a special agreement has been made with respect to the school under this Schedule

The notes to section 15, *ante*, deal in some detail with the position of special agreement schools and the circumstances which led to the passing of the Education Act, 1936

(a) **"Alteration".**—By section 114 (1), p 255, *ante*, "alterations", in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school

(b) **"Premises".**—By section 114 (1), p 255, *ante*, this term, in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling house

(c) ***"Former authority".***—Section 114 (1), p 255, *ante*, provides that this term means any authority which was a local authority within the meaning of any enactment repealed by this Act or any previous Act, in this instance the Education Act, 1936

(d) **"Subsection (2) of section eight of the Education Act, 1936".**—The subsection 7 Halsbury's Statutes 123, required proposals under that section to be submitted to the local education committee at least eighteen months before the appointed day (by section 15 (1), *ibid.*, the appointed day was the 1st September, 1939) or before such later date, being not less than twelve months before the appointed day, as the authority might allow in a particular case The Board of Education might, however, permit new proposals to be entertained at a later

date if satisfied that proposals entertained by a local education authority (whether or not an agreement had been entered into) had become impracticable or undesirable owing to any decision made or action taken before the appointed day by any planning or housing authority

(e) **"Date of the commencement of Part II of this Act".**—By section 119, p 267, *ante*, Part II of the Act comes into operation on 1st April, 1945 As to the position where the proposals have been carried out before that date, or an agreement has been entered into but the proposals have not been carried out, see paragraph 11

(f) **"Local education authority".**—See section 6 and the First Schedule, pp 87 and 271, *ante* As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp 266 and 267, *ante*

(g) **"Senior pupils".**—By section 114 (1), p 255, *ante*, "senior pupil" means a person who has attained the age of twelve years but has not attained the age of nineteen years

(h) **"Development plan".**—As to the preparation of development plans, see section 11, p 103, *ante*

(i) **"Enactments relating to housing or to town and country planning".**—See notes (g) and (h) to section 16, p 119, *ante*

(k) **"By reason of war damage".**—See section 114 (7), p 258, *ante*, and note (p^5) to that section

(l) **"The Minister may give directions".**—As to the revocation or variation of such directions, see section 111 p 254, *ante*

(m) **"Local education order".**—As to the making of local education orders, see section 12, p 107, *ante*

(n) **"Voluntary school".**—See section 9 (2), p 100, *ante*, and, as to the classification of voluntary schools as controlled, aided and special agreement schools, section 15, p. 113, *ante*

(o) **"Religious instruction".**—This paragraph replaces section 9 (1) of the Education Act, 1936, 7 Halsbury's Statutes 125 Special provision is made in section 28, p 144, *ante*, with regard to religious education in (*inter alia*) special agreement schools

(p) **"Trust deed".**—By section 114 (1), p 255, *ante*, this term, in relation to any voluntary school, includes any instrument (not being an instrument of management, instrument of government, rules of management, or articles of government, made under this Act) regulating the maintenance, management or conduct of the school or the constitution of the body of managers or governors thereof See also section 67 (3), p 203, *ante*

(q) **"Reserved teachers".**—See section 28 (3), p 144, *ante*, and particularly note (p) to that section

(r) **"The provisions of this Act".**—The reference is to section 15 (3), p 113, *ante*

Section 21

FOURTH SCHEDULE

MEETINGS AND PROCEEDINGS OF MANAGERS AND GOVERNORS

1. The quorum of the managers or governors (a) shall not be less than three or one third of the whole number of managers or governors, whichever is the greater

2. The proceedings of the managers or governors shall not be invalidated (b) by any vacancy in their number or by any defect in the election appointment or qualification of any manager or governor

3 Every question to be determined at a meeting of the managers or governors shall be determined by a majority of the votes of the managers or governors present and voting (c) on the question, and where there is an equal division of votes the chairman of the meeting shall have a second or casting vote

4 The managers or governors shall hold a meeting at least once in every three months

5 A meeting of the managers or governors may be convened by any two of their number

6 The minutes of the proceedings of the managers or governors shall be kept in a book provided for the purpose (d)

NOTES

Section 21 (2), p 132, *ante*, applies the provisions of this Schedule to the meetings and proceedings of the managers or governors of county schools and voluntary schools—see that section and the notes thereto The Schedule replaces the Third Schedule to the Education Act, 1921, 7 Halsbury's Statutes 220, except paragraphs (4) and (9) of that Schedule, which now appear as subsections (1) and (3) of section 21, *ante*, and paragraph (8), *ibid*, which now appears as section 95 (2) (*a*), p 230, *ante*

(*a*) **"Managers or governors."**—See note (d) to section 17, p 122, *ante*

(b) **"Shall not be invalidated".**—The effect of a similar provision in earlier enactments has been discussed in *Bradley* v *Sylvester* (1871), 25 L T 459, 16 Digest 356, *1868*, *Meyers* v. *Hennell* [1912] 2 Ch 256 19 Digest 561, *39*, and *Harries* v *Crawfurd* [1918] 2 Ch 159, 19 Digest 562, *45* See, however, section 99 (2), p 237, *ante*, which enables the Minister to take steps to secure that there is a properly constituted body of managers or governors in cases where, owing to the default of any person, there is no such constituted body, and also to render valid any acts or proceedings which appear by reason of the default to be invalid or defective

(c) **"Present and voting"** —As to the meaning of the words "and voting", see *R* v *Griffiths* (1851), 17 Q B 164 13 Digest 344, *821* As to what amounts to voting, see *Everett* v. *Griffiths* [1924] 1 K B 941, 33 Digest 12, *28*

(d) **"In a book provided for the purpose".**—As to the proper form of minute books see *Hearts of Oak Assurance Co Ltd* v *James Flower & Sons* [1936] 1 Ch 76, Digest Supp

Section 29.

FIFTH SCHEDULE

PROCEDURE FOR PREPARING AND BRINGING INTO OPERATION AN AGREED SYLLABUS OF RELIGIOUS INSTRUCTION

1 For the purpose of preparing any syllabus of religious instruction to be adopted by a local education authority (a), the authority shall (b) cause to be convened a conference constituted in accordance with the provisions of this Schedule.

2. For the purpose of constituting such a conference as aforesaid the local education authority shall appoint constituent bodies (hereinafter referred to as "committees") consisting of persons representing respectively—

(*a*) such religious denominations as, in the opinion of the authority, ought, having regard to the circumstances of the area, to be represented ;

(*b*) except in the case of an area in Wales or Monmouthshire, the Church of England;

(*c*) such associations representing teachers as, in the opinion of the authority, ought, having regard to the circumstances of the area, to be represented ; and

(*d*) the authority :

Provided that where a committee is appointed consisting of persons representing the Church of England, the committee of persons appointed to represent other religious denominations shall not include persons appointed to represent that Church.

3. Before appointing a person to represent any denomination or associations as a member of any such committee a local education authority shall take all reasonable steps (c) to assure themselves that he is representative thereof, but no proceedings under this Schedule shall be invalidated on the ground that a member of such a committee did not represent the denomination or associations which he was appointed to represent unless it is shown that the local education authority failed to take such steps as aforesaid.

4. A person so appointed may resign his membership of any such committee or may be withdrawn therefrom by the local education authority if in the opinion of the authority he ceases to be representative of the religious denomination or associations which he was appointed to represent, or of the authority, as the case may be ; and where a vacancy occurs among the persons so appointed the authority shall fill the vacancy in like manner as they made the original appointment

5. The conference shall consist of the committees aforesaid and it shall be the duty of the conference (d) to seek unanimous agreement upon a syllabus of religious instruction to be recommended for adoption by the local education authority.

(6) Where the local education authority propose to adopt more than one syllabus of religious instruction for use in schools maintained (e) by them, the authority shall inform the conference as to the schools in which, or in the case of a syllabus intended to be used for certain pupils (f) only, the class or description of pupils for which, the syllabus to be prepared by the conference is to be used.

7. Any sub-committees appointed by the conference shall include at least one member of each of the committees constituting the conference.

8 Upon any question to be decided by the conference or by any sub-committee thereof one vote only (g) shall be given for each of the committees constituting the conference

9. If the conference unanimously recommend any syllabus of religious instruction the authority may adopt it (h) for use in the schools for which, or for the class or description of pupils for which, it was prepared.

10. If the authority report to the Minister that the conference are unable to reach unanimous agreement as aforesaid, or if it appears to the Minister that an authority have failed to adopt any syllabus unanimously recommended to them by the conference, the Minister shall appoint to prepare a syllabus of religious instruction a body of persons having experience in religious instruction, which shall, so far as is practicable, be of the like representative character as is required by paragraph 2 of this Schedule in the case of a conference

11 The body of persons so appointed :—

(*a*) shall give to the authority, the conference, and every committee constituting the conference, an opportunity of making representations to it, but, save as aforesaid, may conduct the proceedings in such manner as it thinks fit ;

(*b*) shall, after considering any such representations made to it, prepare a syllabus of religious instruction ;

(*c*) shall transmit a copy of the said syllabus to the authority and to the Minister, and as from such date as the Minister may direct (i), the syllabus so prepared shall be deemed to be the agreed syllabus adopted for use in the schools for which, or for the class or description of pupils for which, it was prepared until a further syllabus is prepared for use in those schools, or for pupils of that class or description, in accordance with the provisions of this Schedule

12. Whenever a local education authority are of opinion (whether upon representations made to them or otherwise) that any agreed syllabus for the time being adopted by them ought to be reconsidered, the authority shall cause to be convened for that purpose a conference constituted in accordance with the provisions of this Schedule. If the conference convened for the reconsideration of any syllabus unanimously recommend that the existing syllabus should continue to be the agreed syllabus

or that a new syllabus should be adopted in substitution therefor, the authority may give effect to the recommendation of the conference, but if the authority report to the Minister that the conference are unable to reach unanimous agreement, or if it appears to the Minister that the authority have failed to give effect to the unanimous recommendation of the conference, the Minister shall proceed in accordance with the provisions of paragraph 10 of this Schedule, and paragraph 11 thereof shall apply accordingly.

NOTES

By section 114 (1), p. 255, ante, an agreed syllabus is an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to the Act and adopted or deemed to be adopted thereunder.

As to the requirements of the Act in relation to the giving of religious instruction in accordance with an agreed syllabus in county schools, controlled schools, and aided and special agreement schools, see sections 26, 27 and 28 respectively, pp. 142, 143 and 144, *ante*. As to religious education generally, see the general note to section 25, p. 139, *ante*. The agreed syllabus arises from the "Cowper-Temple" clause (originally section 14 of the Elementary Education Act, 1870, which, until replaced by section 26, p. 142, *ante*, appeared in section 28 (2) of the Education Act, 1921; 17 Halsbury's Statutes 143), which prohibited the use in provided schools of any religious catechism or religious formulary distinctive of any particular denomination. Hitherto, however, so long as the religious instruction given in provided public elementary schools and, under sections 9 and 12 of the Education Act, 1936; 29 Halsbury's Statutes 125, 127, in certain circumstances in non-provided schools, did not contravene the Cowper-Temple clause, the *local eduction authority might adopt any particular syllabus which it pleased or might even* leave the matter to the discretion of individual teachers. Although some authorities have adopted the syllabus known as the "Cambridge" syllabus, the whole matter has been one for the discretion of the authority. In future, however, the adoption of an agreed syllabus under this Schedule will be obligatory.

The duty of providing religious instruction in accordance with an agreed syllabus arises as soon as Part II of the Act comes into operation, i.e., on 1st April, 1945. Section 114, p. 255, *ante*, defining the term "agreed syllabus" and referring to this Schedule, came into operation on the passing of the Act (3rd August, 1944). It is therefore necessary to take action under this Schedule forthwith and for an agreed syllabus or agreed syllabuses to be adopted before 1st April, 1945. See section 29 (1), p. 146, *ante*, and notes (a), (b) and (c) to section 114, *supra*.

(a) **"Local education authority".**—See section 6 and the First Schedule, pp. 87 and 271, *ante*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *ante*.

(b) **"The authority shall".**—The obligations imposed here and in later paragraphs of the Schedule may be enforced by the Minister under section 99, p. 237, *ante*. The Minister may also take steps under section 68, p. 205, *ante*, to prevent the unreasonable exercise by a local education authority of any of its functions under the Act.

(c) **"Shall take all reasonable steps".**—The steps referred to are not specified, but it would no doubt be regarded as reasonable to accept the views of the denominations and associations concerned.

(d) **"It shall be the duty of the conference".**—Unlike the duties imposed upon local education authorities, this duty cannot be enforced. As to the procedure to be adopted if the conference fails to reach unanimous agreement, see paragraphs 10 and 11 of the Schedule.

(e) **"Maintained".**—The term "maintain", in relation to a school, is by section 114 (1), p. 255, *ante*, assigned the meaning given to it by subsection (2) of that section.

(f) **"Pupils".**—Subject to the qualification that the pupils referred to are pupils at schools maintained by the local education authority, this expression is defined by section 114 (1), p. 255, *ante*, as persons of any age for whom education is required to be provided under the Act.

(g) **"One vote only".**—The requirement imposed by the Schedule is that the conference shall unanimously recommend; since each of the committees has one vote only this presumably means, not that there shall be unanimity within each committee, but that there shall be unanimity of the committees as a whole, regarding each for that purpose as a single person or unit.

(h) **"The authority may adopt it".**—The local education authority is not bound to adopt a syllabus unanimously recommended but, in the event of failure to do so, the procedure of paragraphs 10 and 11 of the Schedule will be followed and any syllabus so prepared will be *deemed to have been adopted from such date as the Minister may direct.*

(i) **"As the Minister may direct".**—As to the revocation or variation of such a direction, see section 111, p. 254, *ante*. Once adopted or deemed to be adopted the giving of religious instruction in accordance with the syllabus may be enforced by the Minister under section 99, p. 237, *ante*, since, under section 26, p. 142, *ante*, and in certain circumstances under sections 27 and 28, pp. 143 and 144, *ante*, the duty of giving instruction in accordance with an agreed syllabus is imposed.

Section 72

SIXTH SCHEDULE

CONSTITUTION OF INDEPENDENT SCHOOLS TRIBUNALS

1. For the purpose of enabling Independent Schools Tribunals to be constituted as occasion may require there shall be appointed two panels, that is to say—

(*a*) a panel (hereinafter referred to as the "legal panel") appointed by the Lord Chancellor, of persons who will be available to act when required as chairman of any such tribunal; and

(*b*) a panel (hereinafter referred to as the "educational panel") appointed by the Lord President of the Council, of persons who will be available to act when required as members of any such tribunal.

2. No person shall be qualified to be appointed to the legal panel unless he possesses such legal qualifications as the Lord Chancellor considers suitable, and no person shall

be qualified to be appointed to the educational panel unless he had had such experience in teaching or in the conduct management or administration of schools as the Lord President of the Council considers suitable. An officer of any government department and a person employed by a local education authority (a) otherwise than as a teacher shall be disqualified from being appointed to either of the said panels.

3. Any person appointed to be a member of either of the said panels shall hold office as such subject to such conditions as to the period of his membership and otherwise as may be determined by the Lord Chancellor or the Lord President of the Council, as the case may be.

4. Where any appeal (b) is required to be determined by an Independent Schools Tribunal the tribunal shall consist of a chairman being a member of the legal panel and two other members being members of the educational panel, and the chairman and other members of the tribunal shall be impartial persons appointed from those panels by the Lord Chancellor and the Lord President of the Council respectively.

NOTES

Section 72 (1), p. 209, *ante*, enables a person aggrieved by the service of a notice of complaint or a copy thereof, under section 71, p. 208, *ante*, to refer the matter to an Independent Schools Tribunal constituted in accordance with the provisions of this Schedule. Like the whole of Part III of the Act, this Schedule is entirely new.

Section 75 (1), p. 212, *ante*, enables the Lord Chancellor, with the concurrence of the Lord President of the Council, to make rules as to (*inter alia*) the practice and procedure to be followed with respect to the constitution of Independent Schools Tribunals, and, with the consent of the Treasury, as to the payment of remuneration and allowances to members of such Tribunals.

(a) "**Local education authority**".—See section 6 and the First Schedule, pp. 87 and 271, *ante*. As to the application of the Act to London and the Isles of Scilly, see sections 117 and 118, pp. 266 and 267, *ante*.

(b) "**Any appeal**".—This refers not only to appeals under section 72 (1), p. 209, *ante*, but also to appeals under section 74 (2), p. 212, *ante*, against refusals of the Minister to remove disqualifications imposed under Part III of the Act.

Section 110

SEVENTH SCHEDULE

ADJUSTMENT OF VARIATIONS OF RATES CONSEQUENT UPON COMMENCEMENT OF PART II OF THIS ACT

PART I

1. For the purposes of this Schedule the following expressions have the meanings hereby assigned to them, that is to say:—

"Standard year" means the financial year which ended on the thirty-first day of March, nineteen hundred and thirty-nine;

"Elementary education authority" (a) means a council which in the standard year was a local education authority for the purposes of elementary education;

"Standard rateborne expenditure" means, in relation to any elementary education authority the amount by which the expenditure of the authority in connection with elementary education (b) incurred in the standard year recognised for purposes of grant under regulations made by the Board of Education exceeded the amount of the grant payable under those regulations in respect of that expenditure.

2. The Minister shall ascertain the amount of the standard rateborne expenditure of each elementary education authority in the county (c), and the amount in the pound of the rate which would have been necessary to raise that amount.

3. The aggregate of the amounts of the standard rateborne expenditure of elementary education authorities in the county ascertained under the last foregoing paragraph shall be deemed to be the total rate charge of the county for elementary education for the standard year, and the Minister shall ascertain the amount in the pound of the rate which would have been required by precept of the county council to be levied by rating authorities (d) for the purpose of meeting that charge if it had fallen to be borne by that council as part of their expenses for general county purposes (e).

4 The amount in the pound ascertained in respect of any elementary education authority under paragraph 2 of this Schedule is hereinafter referred to as the actual rate poundage of the authority, and the amount in the pound ascertained under paragraph 3 of this Schedule is hereinafter referred to as the notional rate poundage.

5. The Minister shall ascertain in the case of every elementary education authority in the county the amount of the difference between the actual rate poundage of the authority and the notional rate poundage, and where the notional rate poundage exceeds the actual rate poundage of an authority the difference is hereinafter referred to as the rate disadvantage of that authority, and where the notional rate poundage is less than the actual rate poundage of an authority the difference is hereinafter referred to as the rate advantage of that authority.

PART II

1. If the rate disadvantage of any elementary education authority in any county is more than sixpence, but not otherwise, the Minister may, after consultation with the county council, make an order (f) for the county under this Part of this Schedule.

2. Any such order shall come into operation on the date of the commencement of

Part II of this Act (g) and no such order shall remain in force after the expiration of the period of five years from that date

3 The number of years during which (subject to the provisions of the last foregoing paragraph) an order made under this Part of this Schedule shall continue in force shall be the quotient which results from dividing by six the amount of the rate disadvantage of the elementary education authority having the greatest rate disadvantage in the county

In making any calculation for the purposes of this paragraph fractions shall be disregarded

4 An order made under this Part of this Schedule for any county shall provide that in each year during which the order is in force the precepts issued by the county council in accordance with section nine of the Rating and Valuation Act, 1925 (h), for general county purposes shall, instead of being of the same amount in the case of each rating authority as required by that section, be increased or decreased by such amount in the pound as may be determined by the order, being an amount calculated, in the case of a precept issued to a rating authority which is an elementary education authority by reference to the rate advantage or disadvantage of that authority, and in the case of a precept issued to any other rating authority by reference to the rate advantage or disadvantage of the county council

5 The amount by which the precept issued to a rating authority is to be required by the order to be increased or decreased in any financial year (i) shall be a fraction of the rate advantage or disadvantage by reference to which the amount is to be calculated, and the denominator of the said fraction shall be the total number of years, increased by one, comprised in the period for which the order has effect, and the numerator thereof shall be —

(*a*) in the case of the first year for which the order has effect, one less than the denominator, and

(*b*) in the case of each subsequent year, one less than the numerator in the case of the previous year

NOTES

This Schedule relates to section 110, p 253, *ante*, which enables the Minister to provide by order for the adjustment of excessive variations in rates in any particular county consequent upon the commencement of Part II of the Act—see the notes to that section

The following excellent explanation of the operation of the section and Schedule was given to the House of Commons by the Parliamentary Secretary to the Board of Education —

"On 1st April next, the Part III education authorities will disappear, and inside the county areas the county council will become the local education authority The Part III education authorities have levied their own rates in respect of elementary education and the county council has, in the past, levied a rate in respect of elementary education for that part of the county which was not covered by a Part III education authority"

The Parliamentary Secretary took as an example the county of Carmarthenshire and the Part III authorities of Llanelly and Carmarthen, and continued —

"The county council has levied an education rate in Carmarthenshire for the whole of the county except Llanelly and Carmarthen When the new arrangement comes about, there will be one rate levied for the whole of the county of Carmarthenshire and the county council will precept on the boroughs of Llanelly and Carmarthen in the same way as they have hitherto precepted on the other rating authorities in the county and, in some areas, this will mean that rates go up and, in others, that they will go down Some of the increases and decreases will be fairly substantial and might cause a very substantial grievance if, in fact, the increases were levied straight away

My right hon Friend has given a great deal of attention to this matter, and has endeavoured to arrive at a scheme, whereby the increases in the rates shall be made more gradually, and the machinery for securing this is set out in the new Schedule It is impossible to take the rates for the current year as representing, over the whole country, the real burden that normally falls on an area Evacuation, bombing, devastation, and the influx of population has so altered the whole situation that the year 1944–45 would be a very unsafe year to take My right hon Friend has, therefore, taken the year ended 31st March, 1939, for the standard year and he is making, in respect of every elementary education authority area in the country, a calculation as to what was the rate borne expenditure in that area during that particular year. That is called the 'standard rate borne expenditure'. He then assumes that in that year the proposals for making the county council the local education authority for elementary education had been in existence, and he calculates what would have been the rate for the whole county if that had been the case

He then makes a calculation, as to what the uniform rate would have been for the whole county, and this is called the 'notional rate expenditure' Where an authority's rate would have been increased had the notional rate been in operation, the amount of that increase of pence in the £ is called the 'rate disadvantage' and where the rate would have fallen had the county rate been in operation it is called the 'rate advantage'. In some areas the difference is not very great, in others it is substantial My right hon Friend proposes to ignore all increases under 6d in making any arrangement for bringing in a new scheme, but where any one of the various authorities will have a rate disadvantage of more than 6d the scheme in the Schedule may be applied to the area

The action that will be taken after that will be this The authority with the highest rate disadvantage will be considered, that is to say, the authority whose rate would have been raised most had a county rate been in operation in 1939 The number of pence in the £ by which its rate would have gone up will be divided by six Assuming, therefore, that an authority's rate would have gone up by 16 pence, that number will be divided by six, and the answer will be two and a fraction All fractions are ignored and two is taken as the figure to apply to the whole of that county. A scheme is then made in which that rate disadvantage, in the case I have taken, would disappear in two years It will be applied

to every separate rating authority in the county; that is to say, those rating authorities who would suffer a rate disadvantage have that disadvantage brought upon them gradually and those who would gain a rate advantage also get the benefit of the advantage gradually, and the terms of years over which this will work may not exceed five. That is to say, it would have to be a rate disadvantage of 30 pence or more in the £ before you would get the maximum number of years. The calculations will be made by adding one to the number you get by dividing the largest rate disadvantage by six, and then that will be the fraction by which the rate disadvantage will be reduced each year. . . . If we take the example that I originally took, of a rate disadvantage of 16 pence, that will disappear in two years in this way. By applying the fraction provided for in Part II of the Schedule we reduce the rate disadvantage each year by 5⅓ pence. For the first year, therefore, where the authority had a rate disadvantage of 16 pence, its rate will be 10⅔ pence lower than the general rate for the county. In the second year, it will be 5⅓ pence lower than the general rate for the county, and in the third year, the year after the Order has ceased to operate, the two will merge. Of course, similarly, but in the reverse direction, the result would work out the same, if it was an authority which had a rate advantage. Its rate advantage would disappear in the same proportion. In each county, each separate Part III authority will have a separate figure that will have to be increased or diminished, but it will be increased or diminished by the same fraction each year. . . . I understand that there may be about 30 counties in which there might be some scheme of this kind, but it will not operate in any county unless an authority suffers a rate disadvantage of more than 6d. in the £".

With the implementation of the provisions of the Act there is bound to be a general tendency in the future towards an increase in the education rate, both in the counties and in the county boroughs, and it will, of course, be clear that this Schedule does nothing to mitigate the blow of such increases upon the areas of former Part III authorities. It will, in fact, probably happen in some areas that the rise in the rate levied upon a former Part III authority area as the rate disadvantage is diminished will be increased by a general rise in the county education rate and, in other areas, the reduction in the rate as the rate advantage disappears may be nullified by such a general increase.

In one other way have some Part III authorities suffered, not under the Act, but in anticipation of its passing. Some county councils have in recent years maintained fairly large balances on their elementary education accounts, larger in fact than are fully justifiable as working balances, and, in particular, proportionately larger than those maintained by the Part III authorities within the county. In anticipation of the coming-into-operation of Part II of the Act, such county councils have arranged to utilise the whole of their elementary education balances during the year 1944–45, being thus enabled to make an elementary education rate much smaller than usual. The object of this course was, of course, to prevent the Part III authorities to be included within the county on 1st April, 1945, from obtaining any advantage from sums of money in the raising of which they have not shared. In order to re-establish these balances, however, the county councils concerned have precepted for an additional sum as part of the general rate, equivalent to their former elementary education balance, which is to form, for the time being, part of the general rate fund balance. Thus, in one year, and even before the Act comes into operation, the Part III authorities have been called upon to provide the whole of their alleged share of a large balance, which will, in due course, education expenditure then being expenditure for general county purposes, presumably be reallocated to the education account of the county. The legality of this action is, to say the least, somewhat doubtful.

(a) "**Elementary education authority**".—*See* sections 3 and 5 of the Education Act, 1921; 7 Halsbury's Statutes 131, 133, and the Education (Local Authorities) Act, 1931; 24 Halsbury's Statutes 173, referred to in the notes to section 6, p. 87, *ante*.

(b) "**Expenditure of the authority in connection with elementary education**".—It is at least curious that section 110, p. 253, *ante*, refers to the transfer of any functions formerly exercisable by the council of a county district (thus including higher education functions of such a council under section 70 of the Education Act, 1921; 7 Halsbury's Statutes 168, whilst this Schedule refers solely to the functions of an elementary education authority.

(c) "**County**".—This term is defined by section 114 (1), p. 255, *ante*.

(d) "**Rating authorities**".—The term rating authority is not defined in this Act but for the purposes of the Local Government Act, 1933, is defined by section 305 of that Act; 26 Halsbury's Statutes 465, as the council of a county borough or county district acting as rating authority. In this context, county borough councils are necessarily excluded.

(e) "**General county purposes**".—Section 180 (1) of the Local Government Act, 1933; 26 Halsbury's Statutes 404, provides (*inter alia*) that in every enactment relating to the expenses of county councils, unless the context so requires, this expression means all purposes declared by that Act or any other enactment or by any statutory order to be general county purposes, and all purposes for expenditure on which the whole of the county is chargeable, and all purposes which are not made special county purposes by or under any enactment or statutory order.

(f) "**Order**".—As to the revocation or variation of orders made by the Minister, see section 111, p. 254, *ante*. It should be noted, however, that the duty to make an investigation contemplated in this Schedule only arises on the application either of the local education authority or of a council likely to suffer excessive variations in its rates. This presumably means that the only authorities entitled to ask for an investigation, in addition to the local education authority, are those authorities in a county whose rate disadvantages are likely to exceed sixpence.

(g) "**The commencement of Part II of this Act**".—By section 119, p. 267, *ante*, Part II of the Act comes into operation on 1st April, 1945.

(h) "**Section nine of the Rating and Valuation Act, 1925**".—This section; 14 Halsbury's Statutes 267, as amended by the Local Government Act, 1929, deals with the issue of precepts from county councils to rating authorities.

(i) "**Financial year**".—Except in the case of the standard year no definition of this term, either particular or general, is contained in the Act, but section 305 of the Local Government Act, 1933; 26 Halsbury's Statutes 465, defines the term for the purposes of that Act as the period of twelve months ending on the thirty-first day of March.

Section 120.

EIGHTH SCHEDULE

AMENDMENT OF ENACTMENTS

PART I

ENACTMENTS AMENDED FROM DATE OF COMMENCEMENT OF PART II OF THIS ACT

Enactment to be amended	Amendment
The Mental Deficiency Act, 1913	
Section two	For sub-paragraph (v) of paragraph (*b*) of subsection (1), there shall be substituted the following paragraph — " (v) who is a person with respect to whom a report has been issued under the enactments relating to education that he has been found incapable of receiving education at school, or that by reason of a disability of mind he may require supervision after leaving school "
Section thirty-one	The section shall cease to have effect
The Ministry of Agriculture and Fisheries Act, 1919	
Section seven	In subsection (2), for the words " under the Education Act, 1902, stand referred to the education committee," there shall be substituted the words " relate to the functions of local education authorities "
The Children and Young Persons Act, 1933	
Section ten	In subsection (1), after the word " years " there shall be inserted the words " or any young person who has not attained the age at which under the enactments relating to education children cease to be of compulsory school age ", and for the words from " is totally exempted " to the end of the subsection there shall be substituted the words " or young person is not, by being so taken with him, prevented from receiving efficient full-time education suitable to his age ability and aptitude, be liable on summary conviction to a fine not exceeding twenty shillings "; in subsection (2) after the word " child " in both places where that word occurs, there shall be inserted the words " or young person ", for subsection (3) there shall be substituted the following subsection .— " (3) Where in any proceedings for an offence against this section it is proved that the parent or guardian of the child or young person is engaged in any trade or business of such a nature as to require him to travel from place to place, the person against whom the proceedings were brought shall be acquitted if it is proved that the child or young person has attended a school at which he was a registered pupil as regularly as the nature of the trade or business of the parent or guardian permits Provided that in the case of a child or young person who has attained the age of six years the person against whom the proceedings were brought shall not be entitled to be acquitted under this subsection unless it is proved that the child or young person has made at least two hundred attendances during the period of twelve months ending with the date on which the proceedings were instituted "
Section eighteen	In subsection (1), for paragraph (*a*) there shall be substituted the following paragraph — " (*a*) until he has attained an age not less than two years below that at which under the enactments relating to education children cease to be of compulsory school age, or " and in subsection (2), in sub-paragraph (1) of paragraph (*a*), for the words " under the age of twelve years (notwithstanding anything in paragraph (*a*) of the last foregoing subsection) " there shall be sub-

Enactment to be amended.	Amendment
	stituted the words ' before they attain the age at which employment ceases to be prohibited under paragraph (*a*) of the last foregoing sub section "
Section twenty-two	After subsection (3) there shall be inserted the following subsection — " (3A) A licence granted under this section shall specify the times if any, during which the child to which the licence relates may be absent from school for the purposes authorised by the licence, and for the purposes of the enactments relating to education a child who is so absent during any times so specified shall be deemed to be absent with leave granted by a person authorised in that behalf by the managers, governors or proprietor of the school, '
Section sixty-one	In subsection (1), in paragraph (*c*) thereof, after the word " child ' there shall be inserted the words " or young person ", and after the word " children " there shall be inserted the words " or young persons "
Section ninety-six	In subsection (1), the words as respects children " and the words from " for elementary education " (where those words first occur) to the end of the subsection shall be omitted, subsection (2) shall be omitted, in subsection (3) for the words from " for elementary education ' to the end of the subsection there shall be substituted the words " shall be defrayed as expenses under the enactments relating to education ', in subsection (4), for the word " under ' (where that word secondly occurs) there shall be substituted the words " in accordance with ", and the words as expenses of elementary education under the Education Act, 1921 ' shall be omitted
The Local Government Act, 1933	
Section ninety-four ..	After the words ' Public Libraries Act, 1892, ' there shall be inserted the words ' or of a sub-committee of any such committee, " the words " aided, provided or " shall be omitted, and at the end of the section there shall be inserted the words " or sub-committee "
Section one hundred and eighteen	The words ' or The Education Act, 1921," shall be omitted
The Seventh Schedule	The words " the Education Acts, 1921 to 1933," shall be omitted
The Factories Act, 1937.	
Section one hundred and fifty-two	In the definition of ' young person ' for the words " attained the age of fourteen and " there shall be substituted the words ' ceased to be a child but ", and the words from " but does not include " to the end of the definition shall be omitted
The London Government Act, 1939.	
Section sixty-four .. .	After the words " mental hospitals committee of the county council " there shall be inserted the words " or of a sub-committee of any such committee ", and the words ' aided, provided or " shall be omitted
Section eighty-five ..	The words ' the Education Act 1921 or " shall be omitted
The Fifth Schedule	The words The Education Acts, 1921 to 1937," shall be omitted.

PART II

ENACTMENTS AMENDED FROM DATE ON WHICH SECTION FORTY-FOUR OF THIS ACT COMES INTO OPERATION

Enactment to be amended	Amendment
The Unemployment Insurance Act, 1935	
Section seventy-eight . . .	For the word Minister (wherever that word occurs) there shall be substituted the words 'Minister of Education', in subsection (2) for paragraph (*a*) there shall be substituted the following paragraph:— '(*a*) in England or Wales he shall be liable on summary conviction, in the case of a first offence to a fine not exceeding one pound, in the case of a second offence to a fine not exceeding five pounds and in the case of a third or subsequent offence to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment so, however, that no proceedings for such an offence shall be taken except by or on behalf of the Minister of Education", for subsection (4) there shall be substituted the following subsection — '(4) The regulations made by the Minister of Education under this section shall make provision as to the functions to be performed by local education authorities with respect to persons required under this section to attend at authorised courses, and, in particular, shall direct such authorities to make in any college attendance notice served on any such person such modifications as may be provided by the regulations, and shall make provision as to the circumstances in which and the extent to which attendances in pursuance of requirements under this section may be reckoned as attendances in pursuance of the requirements of college attendance notices"
Section eighty-one	In subsection (1) in paragraph (*b*) thereof for the words "that age" there shall be substituted the words 'the age of eighteen years"
Section eighty-seven . . .	In subsection (1), after the words this Act, where those words first occur, there shall be inserted the words 'other than an offence under section seventy eight of this Act', in subsection (3), for the words "an offence under this Act" there shall be substituted the words "any such offence as aforesaid"
Section one hundred and four	In subsection (1) after the word Act", where that word first occurs, there shall be inserted the words 'except under section seventy-eight thereof'
Section one hundred and thirteen	In subsection (1) for the definition of "Authorised course" there shall be substituted the following definition — 'Authorised course means a county college established under the enactments relating to education or a training course provided under section seventy-seven of this Act and includes, in relation to insured contributors who have attained the age of eighteen years, any training course provided by the Assistance Board under the Unemployment Act, 1934'

NOTES

This Schedule has reference to section 120, p 268, *ante*

The effect of Part I of the Schedule is to amend the enactments therein listed from the 1st April, 1945 (section 119, p 267, *ante*)

Section 44, p 172, *ante*, referred to in Part II of the Schedule, is to come into operation on such date as the Minister may by order direct, being as soon as practicable after the date fixed by Order in Council under section 43, p 171, *ante*, on which the duty of establishing and maintaining county colleges is imposed on local education authorities.

Section 121.

NINTH SCHEDULE
ENACTMENTS REPEALED

PART I
ENACTMENTS REPEALED FROM DATE OF COMMENCEMENT OF PART II OF THIS ACT

Session and Chapter	Short Title	Extent of Repeal
52 & 53 Vict c 40	The Welsh Intermediate Education Act, 1889	Section nine
3 & 4 Geo 5 c 28	The Mental Deficency Act, 1913	Subsection (2) of section two, proviso (iv) of section thirty, and section thirty-one
9 & 10 Geo 5 c 91	The Ministry of Agriculture and Fisheries Act, 1919	Proviso (i) to subsection (2) of section seven
10 & 11 Geo 5 c 65	TheEmployment ofWomen, Young Persons and Children Act, 1920	In section four, the definition of the expression "child"
11 & 12 Geo 5 c 51	The Education Act, 1921	The whole Act
13 & 14 Geo 5 c 38	The Education (Institution Children) Act, 1923	The whole Act
16 & 17 Geo 5 c 9	The Economy(Miscellaneous Provisions) Act, 1926	Section twelve
19 & 20 Geo 5 c 17	The Local Government Act, 1929	Subsection (1) of section eighty-two
21 & 22 Geo 5 c 6	The Education (Local Authorities) Act, 1931	The whole Act
23 & 24 Geo 5 c 12	The Children and Young Persons Act, 1933	In section thirty the words from "A person who is attending" to the words 'of that term", in subsection (3) of section forty-six the words from 'For the purposes of this subsection" to the end of the subsection, in section ninety six, in subsection (1) thereof, the words "as respects children" and the words from "for elementary education" (where those words first occur) to the end of the subsection, subsection (2) thereof, in subsection (4) thereof the words 'as expenses of elementary education under the Education Act, 1921", in subsection (5) thereof the words 'or urban district" in subsection (6) thereof the words "or urban district", and in subsection (7) thereof the words 'Subject to the provisions of section four of the Education Act, 1921 (which require certain matters to be referred to education committees)", in section ninety-seven and in section one hundred and four the words "for elementary education", in section one hundred and six in subsection (2) thereof, paragraph (*b*)
23 & 24 Geo 5 c 29	The Education (Necessity of Schools) Act, 1933	The whole Act
23 & 24 Geo 5 c 51	The Local Government Act, 1933	In section ninety-four the words 'aided, provided or", in section one hundred and eighteen the words "or the Education Act, 1921', and in the Seventh Schedule the words "The Education Acts, 1921 to 1933"

Session and Chapter	Short Title	Extent of Repeal
26 Geo 5 & 1 Edw 8 c 41	The Education Act, 1936	The whole Act
1 Edw 8 & 1 Geo 6 c 25	The Education (Deaf Children) Act, 1937	The whole Act
1 Edw 8 & 1 Geo 6 c 46	The Physical Training and Recreation Act, 1937	Sections one and two, in section three, in subsection (1) thereof the words from "recommendations" to "with" and the words after considering a recommendation of the grants committee", and in subsection (3) thereof the words "after consultation with the National Council for England and Wales" and the words "on the recommendation of the grants committee and", section six, and subsection (2) of section eight
1 Edw. 8 & 1 Geo. 6. c. 67.	The Factories Act, 1937.	In subsection (1) of section one hundred and fifty-two, in the definition of "young person", the words from "but does not include" to the end of the definition
1 & 2 Geo. 6. c 40	The Children and Young Persons Act, 1938	Section three, in section four, in subsection (1) thereof, the words "or under section forty-five of the Education Act, 1921, as so amended", and in subsection (2) thereof the words "and section forty-five of the Education Act, 1921"; in section six, in subsection (1) thereof, the words "or by virtue of subsection (2) of section three of this Act", and in subsection (2) thereof the words "or under subsection (2) of section three of this Act"
2 & 3 Geo 6. c. 40.	The London Government Act, 1939	In subsection (1) of section sixty-one the words from "and the provisions" to the end of the subsection, in section sixty-four the words "aided, provided or", in section eighty five the words "the Education Act 1921 or", and in the Fifth Schedule the words the Education Acts, 1921 to 1937"
2 & 3 Geo 6 c 60	The Senior Public Elementary Schools (Liverpool) Act, 1939	The whole Act
2 & 3 Geo 6 c 111	The Education(Emergency) Act, 1939	The whole Act

PART II

ENACTMENTS REPEALED FROM DATE ON WHICH SECTION FORTY-FOUR OF THE ACT COMES INTO OPERATION

Session and Chapter	Short Title	Extent of Repeal
25 Geo. 5. c. 8. ..	The Unemployment Insurance Act, 1935.	Section seventy-six; in subsection (1) of section seventy-nine the words " and contribute towards the cost of any other authorised courses "; in section eighty, in subsection (1) thereof, the words " persons who have not attained the age of eighteen years and of " and the words " who have attained that age," and in subsection (2) thereof paragraph (*a*); in section eighty-one, paragraph (*a*) of subsection (1) thereof, and subsection (3) and subsection (4); in subsection (1) of section eighty-three the words from " and the powers and duties " to the end of the subsection; in section one hundred and four, in subsection (2), the words " section seventy-eight or "; and section one hundred and twelve.
1 & 2 Geo. 6. c. 8.	The Unemployment Insurance Act, 1938.	Section one.

NOTES

This Schedule has reference to section 121, p. 270, *ante*.

The effect of Part I of the Schedule is to repeal the enactments therein listed from 1st April, 1945.

Section 44, p. 172, *ante*, referred to in Part II of the Schedule, is to come into operation on such date as the Minister may by order direct, being as soon as practicable after the date fixed by Order in Council under section 43, p. 171, *ante*, on which the duty of establishing and maintaining county colleges is imposed on local education authorities.

INDEX

INDEX

ACCOUNTS,
of county borough councils, 228
ACTIVITIES,
school, participation in, cost of, power to defray [23], 219
ACT OF WORSHIP, *see* WORSHIP
ACTS OF PARLIAMENT, *see* ENACTMENTS.
ADOLESCENT,
report of Consultative Committee on Education of, [3]
ADULT EDUCATION,
duty to provide, 164
necessity for, [60], [167 G N]
powers of Minister as to, [60], 170
schemes for, [60], 170
White Paper recommendations as to [166 G N]
AGE,
attainment during term, 258
birth certificate as proof of, [46], 229
compulsory school, *see* COMPULSORY SCHOOL AGE
maturer, persons of, training as teachers, [49]
presumption as to, 230
proof of, [46], 229
AGREED SYLLABUS,
adoption of, 146, 286
Cambridge syllabus, adoption of, [259 b], [287 G N]
committees to be appointed to consider, 286
existing, adoption of, 258, [259 b]
failure to prepare or adopt, powers of Minister on, 286
instruction in accordance with, inspection of, 214
meaning of, 255
preparation of, [52], 146
provisions as to, summary of, [147 b]
reconsideration of, 146, 286
religious instruction in county schools to be in conformity with, 142
secondary schools, for use in, [259 b]
transitional provisions as to, 258
AGREEMENT,
for transfer of interest in voluntary school premises, 282
special, *see* SPECIAL AGREEMENT
to terminate grouping of schools, 131
AGRICULTURAL EDUCATION,
Government policy as to, [9]
AIDED SCHOOLS,
administration of, [28], 127, 129
buildings of, maintenance of, [27], 114
use of, [29], 133
caretakers of, 133
conditions of classification as, [27], 113, [118 c]
conversion into controlled schools, 114
of special agreement schools into, [31], 114
finance of, summary, [116 G N]
loans to, [28], 246
conditions of making, [247 d]
maintenance of, contributions in respect of, 242
expenses of, [27]
how borne, 114
primary, managers of, [28], 127
provisions as to, summary of, [116 G N]

AIDED SCHOOLS—*continued*
religious instruction in, [29], [53], 144
" reserved teachers " in, 144
rules of management, [28]
secondary, governors of, 129
grants in aid of existing liabilities, 203
secular instruction in, [36], 124
substituted, grants in respect of, 243
substitution of new voluntary school for, [28], 243
teachers in, appointment and dismissal of, 136, [136 G.N.]
educational qualifications, of, 136
transfer of, [27], 243
transferred or substituted, grants in respect of, 243
voluntary schools to be prior to classification, 150

ALLOWANCES,
continuation of, [74]

ALTERATIONS,
meaning of, 255

ANSON BYE-LAW, [50]

APPEAL,
against college attendance notice, 174
as to compensation of officers injuriously affected, [237 r]
to Independent Schools Tribunal, [70], 209, 210

APPRENTICESHIP,
systems, improvement of, [116 G.N.]

AREA TRAINING SERVICE,
schemes for, [49]

ARMY BUREAU OF CURRENT AFFAIRS, [60], [166 G.N.]

ART EDUCATION,
consideration by central advisory committee, [10]

ARTICLES OF GOVERNMENT,
contents of, 121, [123 r], 136
Government policy as to, [123 r]
instrument of government contrasted with, [129 a]
interpretation of, [127 G.N.]
secondary schools to be conducted in accordance with, 121

ASSISTED SCHOOLS,
fees in, [37]
free places in, [37]
meaning of, [37], [101 h], 258
power to assist, 100

ASSURANCES,
of land, exemption from Mortmain Acts, 223

ATTENDANCE,
school, *see* SCHOOL ATTENDANCE.

AUDIT,
of accounts of county borough councils, 228

BIRTHS AND DEATHS,
registrar of, particulars to be furnished by, 229

BISHOPS,
determination of certain questions by, 203

BLIND CHILDREN, *see also* DISABLED CHILDREN.
education of, [65], 132
former, [41]
meaning of, [153 d]

BLOCK GRANT, [70]

BOARD OF EDUCATION,
abolition of, [3], [8], 83
circular as to training of teachers, [200 G.N.]
constitution of, [7], [84 G.N.]
creation of, [2], [84 G.N.]
duties of, limitation of, [8]
President of, functions of, [7], [8]
last, [84 G.N.]
salary of, [84 G.N.]
transfer of functions of, 85
reconstitution as Ministry, [84 G.N.]
Regulations for secondary schools, [20]
transfer of property and functions of, 85

BOARDING ACCOMMODATION,
cost of, recovery of, 186
fees for, 186, 196
provision of, [43], 97, [99 x], 184, 186
wishes of parent to be consulted as to, 184

BOARDING SCHOOLS,
attendance at, regular, what amounts to, 161
provision of, [22], 97, 104

BOROUGH COUNCIL,
exercise of functions of divisional executive, 276

BORROWING,
powers, divisional executives not to have, 276

BRITISH AND FOREIGN SCHOOLS SOCIETY,
establishment of schools by, [1]
foundation of, [24]
schools, religious instruction in, [50]

BUILDINGS,
aided schools, *see* AIDED SCHOOLS.
controlled schools, *see* CONTROLLED SCHOOLS.
exemption from bye-laws, 200
regulations as to, 103
school, essential features, [62]
meaning of, 114
standard of, 103
exemption from compliance with, 103
voluntary schools, care and use of, 133
occupation of, 133

BURNHAM COMMITTEE,
establishment of, [226 G.N.]
new, appointment of, [48]
composition of, [48]
scale laid down by, [47]
status of, [48]

BYE-LAWS,
"Anson", [50]
as to employment of children, [46]
building, exemption from, [41], 200
school attendance, no longer necessary, [42]

CAMBRIDGE,
agreed syllabus, [259 b], [287 G.N.]
borough of, special position of, [11 b], [272 G.N.]

CAMBRIDGESHIRE,
village colleges, [166 G.N.]
cultural activities provided by, [170 g]

CAMPS,
establishment and maintenance, [23], 187

CANAL BOATS,
children living on, [45]
school attendance, 161, [163 n]
young persons living on, [177 g]
CARETAKERS,
of maintained secondary schools, [126 G.N.]
voluntary schools, 133
CENSUS,
last published, references to, how construed, [282 u]
CENTRAL ADVISORY COUNCILS,
constitution of, 86, 87
establishment of, [3], [10], 86
functions of, [3], [10], [86]
members of, qualifications of, 87
procedure of, 87
report to Parliament as to, 87
CENTRAL TRAINING COUNCIL,
recommendations as to, [49]
CENTRAL WELSH BOARD,
constitution of, [242 m]
payments to, 241
CERTIFICATE,
of birth, 229
exemption from compulsory further education, 177
Minister of Education, effect of, 86
medical, as to disability, 154
CHANGES,
principal, dates of coming into operation, [4]
outline of, [2]
CHARITY COMMISSIONERS,
functions of, transfer of, 85
CHIEF EDUCATION OFFICER,
appointment of, [13], 225
qualifications of, [14]
CHILD,
in need of care and protection, [45], 163
meaning of, 255, 269
for purpose of employment enactments, 194
persons liable to maintain, [262 x^1]
CHURCH OF ENGLAND,
Elementary Schools, reorganisation of, former difficulties, [223 G.N.]
CLASSES,
holiday, provision of, [23], 187
nursery, *see* NURSERY CLASSES.
size of, reduction in, [4], [18], [98 G.N.]
CLEANLINESS,
power of local authorities to ensure, [63], 188
CLEANSING,
notice requiring, 188
of girls, 190
order for, 189
use of premises and appliances for, 189
CLERKS,
to governors of maintained secondary schools, [126 G.N.]
CLOTHING,
cleansing of, [63], 189
cost of, recovery of, 186
for physical training, power to provide, [57], 187
inadequacy of, [185 G.N.]

CLOTHING—*continued*
meaning of, 255
power to examine, 188
provision of, [4], [62], 185, 216
verminous, cleansing of, [63]
White Paper proposals as to, [185 G.N.]

COLLEGE ATTENDANCE NOTICE,
appeals as to, 174
copy of, service of, on employer, 176
disobedience to, [57], 174
effect of, 172
on computation of working hours, 195
form of, 176
non-compliance with, [57], 174
penalty for, 177
proceedings for, 177
requirements to be specified in, 172
service of, [56], 172

COLLEGES,
county, *see* COUNTY COLLEGES.
university, grants to, 221

COMMENCEMENT,
of different Parts of Act, 267

COMMITTEES,
as to remuneration of teachers, 225
Education, *see* EDUCATION COMMITTEES.
to be appointed to consider agreed syllabus, 286

COMPENSATION,
of officers, 234
appeals as to, [237 r]
commencement of, [237 r]
forms to be used, [237 r]
general principles to be applied, [236 r]
lump sum payments, [236 r]
procedure for claiming, [235 r]
suspension of, [237 r]
war service to be reckoned, [237 r]
teachers in discontinued schools, [74], 234

COMPLAINT,
as to independent school, notice of, [69], 209
reference to tribunal, 209

COMPULSORY PURCHASE,
of land, 226
previous law, [227 G.N.]

COMPULSORY SCHOOL AGE,
children of, duty to secure education of, 157
definition of, 155, 255
persons over, education of, *see* FURTHER EDUCATION.
previous law, [156 G.N.]
raising of, [2], [3], [21], 156
for pupils in special schools, [42], [66], 160
postponement of, [5]
Order for, [250 G.N.]
transitional provisions as to, 258

CONFERENCES,
educational, power to organise, 220
for preparation of agreed syllabus, 286

CONSULTATIVE COMMITTEE,
abolition of, [10]
establishment of, [10], [87 G.N.]
functions of, [10], [87 G.N.]
CONTRIBUTIONS,
between local education authorities, 248
CONTROLLED SCHOOLS,
administration of, [25]
buildings, improvement of, [27]
use on Saturdays and Sundays, [26], 133
caretaker of, [26], 133
conditions of classification as, [25], 114, [117 b]
financial responsibility for, [25], [117 G.N.]
maintenance of, expenses of, [25], 114
managers of, [25], 127
number of, probable, [26]
premises of, occupation and use, [26], 133
primary, managers of, 127
provisions as to, summary of, [117 G.N.]
religious instruction in, [25], [52], 143
secondary, governors of, 129
secular instruction in, 134
status of, [25]
teachers in, appointment and dismissal of, [25], 136
"reserved", [26], [53], 143
head teacher not to be, 114
unclassified voluntary schools to be, 114
CORPORATION SOLE,
meaning of, [85 c]
Minister of Education to be, 83
COUNCIL FOR THE ENCOURAGEMENT OF MUSIC AND ARTS, [9], [60], [166 G.N.], [170 g]
COUNTY,
district, meaning of, [91 i]
Isles of Scilly to be deemed to be, 267
local education authority for, 87
meaning of, [90 c], 255
COUNTY BOROUGHS,
councils of, audit of accounts, 228
local education authorities for, 87
COUNTY COLLEGES,
accommodation, proposed, [166 G.N.]
attendance at, administrative provisions to secure, 176
compulsory, [4], [56], 172
continuous, [56], 172
enforcement of, 177
exemptions from, [57], 174
on Sundays, [57], 173
periods of, 172
variation of, 173
times of, 172
notices, *see* COLLEGE ATTENDANCE NOTICE.
boarding accommodation, 170
out of young persons attending, 184
cleanliness of pupils at, power to ensure, 188
education to be provided in, nature of, [58]
establishment of, [56], 170
date for, 171
exclusion of unclean pupils from, 189
fees not to be charged at, [56], 196
functions of, [56], [58]
hours of attendance at, to count as working hours, 195
maintenance of, 170

COUNTY COLLEGES—*continued*
meaning of 170,
medical inspection in, 179
treatment, free, of young persons in, 180
milk meals and refreshments to be supplied in, 183
non-attendance at, penalty for, 177
proceedings for, 177
orders as to, [56]
penalties for non-attendance at, [57], 177
physical training at, clothing for, [187]
plan as to, preparation and submission, [56], 170
provisions as to, summary of, [168 G.N.]
purpose of, [58]
regulations as to, [56], 171
religious instruction in, [54]
transport to, provision of, [61], 190
COUNTY SCHOOLS,
discontinuance of, 109
establishment of, 109
grouping of, 130
instruments of management or government, [34], 121
meaning of, [24], 100
new, establishment of, 109
nursery schools cannot be, 100, [102 v]
primary, rules of management, 121
registration of pupils, 218
religious instruction in, [25], [52], 139, 142
schools vested in local education authority as trustee to become, 221
secondary, articles of government, 121
religious instruction in, 142
secular instruction in, [36], 134
teachers in, appointment and dismissal, 136, [137 G.N.]
married women, 136
transfer to new sites, 119
transitional provisions as to, 148
COWPER-TEMPLE CLAUSE,
introduction of, [50], [115 G.N.]
re-enactment of, 142, [143 f]
violation of, alleged, [115 G.N.]
CRIPPLES, *see also* DISABLED CHILDREN,
education of, [65]
CROWN,
debt due to, recovery of, [238 o]
servants of, saving as to, 265
DATES,
of coming into operation of Act, [4], 267
DAY CONTINUATION SCHOOLS,
establishment, [56]
schemes for, [165 G.N.]
Rugby experiment, [165 G.N.]
DEAF CHILDREN, *see also* DISABLED CHILDREN.
education of, [65]
pre-Act, [41]
meaning of, [153 d]
DEBT,
Crown, recovery of, [238 o]
DEFECTIVE CHILDREN, *see also* SPECIAL EDUCATIONAL TREATMENT, SPECIAL SCHOOLS
categories of, to be defined, 151
compulsory school age, [42], [66], [156 G.N.] [160]

DEFECTIVE CHILDREN—*continued*
education of, 151
previous law, [41], [152 G.N.]
medical examination of, 154
DEFICIENCY GRANT,
abolition of, [71]
DEPUTY HEADS,
recommendations as to, [49]
DEVELOPMENT PLANS,
approval of, [6], 105
contents of, [5], [73], 104
managers and governors to be consulted as to, 104
objections to, [6]
consideration of, 104
particulars of, to be furnished to interested parties, 104
preparation of, [5], [73], 103
stages of, summary, [105 G.N.]
provision for defective children to be made in, [65]
publicity as to, reasons for, [6]
requirements as to, summary of, [5]
submission to Minister, 103
DINING-HALLS,
school, provision of, [62]
DIOSESAN EDUCATION AUTHORITIES,
consultation with, [107 bb]
DIOCESAN EDUCATION COMMITTEES,
consultations with, [251 *e*]
establishment of, [223 G.N.]
DIRECT GRANT SCHOOLS,
ancillary services for pupils of, provision of, 216
endowed grammar schools as, [24]
fees, [197 G.N.]
free places in, [38]
Government policy as to, [197 G.N.]
list of, revision of, [197 G.N.]
meaning of, [264 o*]
number of, [96 d]
DIRECTIONS,
revocation of, 254
variation of, 254
DISABILITY,
medical certificate as to, 154
DISABLED CHILDREN, *see also* SPECIAL EDUCATIONAL TREATMENT, SPECIAL SCHOOLS
categories of to be defined, 151
compulsory school age, [156 G.N.]
education of, 151
previous law, [152 G.N.]
medical examination of, 154
DISINFESTATION,
powers as to, 188
DISPUTES,
determination of, 203
previous law, [204 G.N.]
DIVISIONAL ADMINISTRATION,
schemes of, *see* SCHEMES OF DIVISIONAL ADMINISTRATION.
DIVISIONAL EXECUTIVES,
borough councils as, 276
constitution of, [11], [73], 275, [279 G.N.]
correspondence with Ministry, [281 G.N.]

DIVISIONAL EXECUTIVES—*continued*
delegation of powers as to further education to, 276
establishment of, 275, [279 G.N.]
financial responsibility of, [281 G.N.]
functions of, [12], 275
definition of, [280 G.N.]
delegation to committees, [280 G.N.]
under other Acts, [280 G.N.]
managers and governors nominated by, [281 G.N.]
minutes of, 277
power to hold land not conferred on, [282 r]
proceedings of, [280 G.N.]
staff of, appointment and dismissal of, [280 G.N.]
teachers serving on, [49]
urban district council as, 276

DWELLING-HOUSE,
teacher's, not included in definition of school premises, 256

EDUCATION,
compulsory, imposition of, [41]
full-time, meaning of, [98 f]
statutory stages of, [3], 93

EDUCATION ACT, 1944,
Part II, commencement of, power to facilitate, 250
Parts, different, commencement of, 267

EDUCATION COMMITTEES,
constitution of, [12], [73], 273
duty to secure, 250
delegation of functions to, 273
members of, 273
minutes of, inspection of, [12], 274
powers of, 274
reports by, consideration of, 273

EDUCATION DEPARTMENT,
abolition of, [2]
replaced by Board of Education, [7]

EDUCATION OTHERWISE THAN AT SCHOOL,
ancillary services for children receiving, 216
power to provide, 191

EDUCATIONAL ESTABLISHMENT,
inspection of, 213
meaning of, [182 j], 213

EDUCATIONAL INSTITUTIONS,
meaning of, [172 i], [175 x], [179 i]

EDUCATIONAL PANEL,
appointment of, 287

EDUCATIONAL PURPOSES,
meaning of, [224 d]

EDUCATIONAL RECONSTRUCTION,
White Paper on, *see* WHITE PAPER ON EDUCATIONAL RECONSTRUCTION.

ELEMENTARY EDUCATION,
former authorities for, [88 G.N.], [260 k]
history of, [115 G.N.]

ELEMENTARY SCHOOLS,
agreed syllabuses of religious instruction in, [52]
Church of England, reorganisation of, former difficulties, [223 G.N.]
discontinuance of, [39]
establishment of, [39]
head teachers of, certificates required by, [47]

ELEMENTARY SCHOOLS—*continued*
history of, [24]
managers of, [32]
medical inspections in, [63]
non-provided, management, former, [122 G.N.]
use and care of buildings, [133 G.N.]
provided, management, former, [121 G.N.]
public, definition of, [102 s], [265 o³]
reorganisation of, [2], [3], [17], [24]
transfer of potential teachers from, [200 G.N.]
types of, [50]
EMOLUMENTS,
of officers, diminution of, compensation for, 234
assessment of, [236 r]
EMPLOYERS,
duty to notify changes of employment of young persons, [46], 176
representations by, as to further education, 173
EMPLOYMENT,
adaptation of enactments relating to, 194
of children, [46]
power to prohibit, 194
restrict, 194
ENACTMENTS,
amendment of, 268, 291
construction of, 85, 258, 268
modification of, 233
repeal of, 270, 294
relating to employment, adaptation of, 194
ENDOWMENTS,
administration of, schemes for, 202
making of, [203 l]
application of, 202
educational, meaning of, 223
powers relating to, transfer of, [85 G.N.]
schemes as to, extension of powers to make, 222
sale of land pursuant to, 222
variation of, [32]
EPILEPTIC CHILDREN, *see also* DEFECTIVE CHILDREN.
instruction of, former, [41]
meaning of, [153 d]
EVIDENCE,
certificate of exemption from compulsory education to be, 177
documents to be received in, 230
EXAMINATION,
for special places, abolition of, [4]
medical, *see* MEDICAL EXAMINATION.
of person and clothing, 188
girls, 190
EXPEDITIONS,
power to organise, [23], 187
EXPULSION,
power of, [46]
EXTRAORDINARY CIRCUMSTANCES,
education of children unable to attend school by reason of, 191
meaning of, [191 b]
FALSE STATEMENTS,
penalties for, [58], 177
FARM INSTITUTES, [9]
FEES,
abolition of in maintained schools, [2], [75], 196
previous law, [196 G.N.]

FEES—*continued*
for board and lodging, 196
Fleming Committee's report as to, [197 G N]
Government policy as to, [197 G N]
power of local education authorities to pay, 219
to charge when retained, [37]
remission of, [4]
FILMS,
use in schools, [10]
FINANCE,
block grant [71]
contributions between local education authorities, 248
deficiency grant, abolition of, [71]
expenditure, additional, main headings of [240 G N]
expenses to be defrayed out of moneys provided by Parliament, 249
grants, regulations as to, 239
maintenance contributions to aided and special agreement schools, 242
memorandum as to 77, [240 G N]
principles, [70]
provisions as to, principal changes, [240 G.N]
regulations relating to, power to make, 239, 241
responsibility for delegation to divisional executives, [281 G N]
secondary schools, maintained, [125 G N]
single combined grant, introduction of, [71]
transitional provisions, [71]
Wales and Monmouthshire, special position, [76], 241
FLEMING COMMITTEE,
report of [96 d], [197 G N]
FOOTWEAR,
included in definition of clothing, 255
provision of, [4]
FORMER AUTHORITIES,
agreed syllabus adopted by, 258
cessation of functions of, consequential provisions, 231
classes of, [88 G N]
duty of, [17]
for elementary education, [88 G N]
number of, [88 G N.]
higher education, [89 G N]
meaning of, [232 a], 255
officers of, appointment of, [13]
transfer of, 88
Part II and Part III, [88 G N]
Part III, grievances of, [277 G N]
powers of, [11]
as to special schools, [99 s]
to assist erection of non provided schools, [29]
property of, transfer of, 87
proposals submitted to, effect of, 283
school attendance officers, [14]
transitional provisions as to, 250
FREE EDUCATION
introduction of, [2]
FURTHER EDUCATION,
basic elements, [165 G N]
changes as to, summary of, [168 G N]
college attendance notice, *see* COLLEGE ATTENDANCE NOTICE.
compulsory, exemption from, [57], 174
certificate of, 177
county colleges, *see* COUNTY COLLEGES
curriculum, [166 G N]

FURTHER EDUCATION—*continued*
duties of local authorities as to, general, 164
summary, [61]
duty to provide, [55]
field of, [166 G.N.]
government policy as to, [165 G.N.]
history of, [164 G.N.]
meaning of, [55], 255
modes of providing, [55]
place in statutory system, 97
powers as to, delegation to divisional executive, 276
schemes for, approval of, 170
carrying out of, 170
modification of, 170
preparation of, 170
revocation of, 170
submission to Minister, 170..
scholarships for, [61]
technical, [166 G.N.]
transitional provisions as to, [74], 178
White Paper proposals as to, [165 G.N.]

GAMES,
power to organise, [23], 187

GIFTS,
power of local education authorities to accept, 221

GIRLS,
examination and cleansing of, [63], 190

GOVERNMENT,
instruments of, *see* INSTRUMENTS OF GOVERNMENT.

GOVERNORS, *see also* MANAGERS.
appointment of, [34], 129
clerks to, [126 G.N.]
constitution of, [34], 121, [134 G.N.]
consultation with as to development plans, 104
discontinuance of voluntary school by, restrictions on, 112
disputes between local education authority and, 203
foundation, 129
meaning of, 255
functions of, unreasonable exercise of, 205
meetings of, 285
minutes of, 132
nomination by divisional executives, [281 G.N.]
of voluntary schools, control of buildings, 133
power of Minister to appoint in default, 237
to grant holidays, [127 G.N.]
powers of Minister in default of, [31], 237
proceedings of, 132, 285
resignation of, 132
women, [35]

GRAMMAR SCHOOLS,
endowed, history of, [1], [23]
grants to, [23]
direct, [24]
special places in, examinations for, abolition of, [4]

GRANTS,
deficiency, abolition of, [71]
financial memorandum as to, 77
formula, former, continuance of, [72]
in respect of agricultural education, [9]
aided schools, 242
established for displaced pupils, 244
transferred and substituted, 243

GRANTS—*continued*
in respect of construction of voluntary schools, 246
existing liabilities of aided secondary schools, 203
special agreement schools, 242
established for displaced pupils, 244
transferred and substituted, 243
maintenance, power to make, 219
pursuant to special agreement, 284
regulations as to, 239
single combined, introduction of, [71]
to universities, power to make, 220
transitional provisions as to, [240 G.N.]
Wales and *Monmouthshire, special provisions*, **241**
GROUPING,
of schools, provisions as to, [35], 130
GUARDIAN,
meaning of, 248
GYMNASIUMS,
provision of, [23], [62], 187
HADOW REPORT, [199 G.N.]
HIGHER EDUCATION, *see also* FURTHER EDUCATION.
former authorities for, [89 G.N.]
meaning in 1921 Act, [164 G.N.]
power to supply or aid, [164 G.N.]
HIGHER SCHOOL LEAVING CERTIFICATE, [20]
HOLIDAYS,
power to fix, 135
grant occasional, [137 G.N.]
HOLIDAY CLASSES,
provision of, 187
HOME EDUCATION,
power to provide, 191
pupils undergoing, medical inspection or treatment of, 216
HOME OFFICE,
control of approved schools, [84 G.N.]
HOURS,
school, power to fix, 134
working, computation of, effect of college attendance notices on, **195**
IDIOTS, *see* MENTAL DEFECTIVES.
IMBECILES, *see* MENTAL DEFECTIVES.
INDEPENDENT SCHOOLS,
attendance at, power to require, [44]
complaints as to, 208
notice of, 209
control of, history of, [68]
existing, number of, [68]
types of, [68]
inspection of, [4], [38], [69], 213
meaning of, 255
medical examination and *treatment of pupils in*, [64], 216
milk meals and refreshments in, provision of, 216
Newcastle Commission's recommendations as to, [68]
position of, pre-Act, [68]
proprietors of, disqualification of, [69], 210
removal of, 212
notice of complaint to, [69], 209
provisions as to, summary of, [208 G.N.]
register of, removal from, 210, 211

INDEPENDENT SCHOOLS—*continued*
Registrar of, [69], 206
registration of, [4], [69], 206
exemption from, [69]
provisional, [69], 207
pupils, 218
State responsibility for, [207 G.N.]
teachers in, disqualification of, 210
removal of, 212
tribunal, *see* INDEPENDENT SCHOOLS TRIBUNAL.
unregistered, offence to carry on, [69]
penalty for carrying on, 207
unsatisfactory, powers as to, 209
White Paper proposals as to, [68], [207 G.N.]

INDEPENDENT SCHOOLS TRIBUNAL,
appeals to, [70], 209
constitution of, [70], 287
educational panel, 287
legal panel, 287
orders of, enforcement of, 211
registration of, 212
powers of, 210
proceedings before, 212

INFANT SCHOOLS,
separation from junior schools, [19]

INFANTS,
separate schools for, desirability of, [95 c]

INFORMATION,
duty to give to Minister, 228

INITIAL EXPENSES,
loans in respect of, 246
meaning of, 246

INQUIRIES,
local, how made, [229 G.N.]
power to direct, 229
to be held before constitution of joint education board, 271

INSPECTION,
medical, *see* MEDICAL INSPECTION.
of educational establishments, 213
independent schools, [4], [69]
pre-Act, [68]
minutes of meetings of managers or governors, 132
religious instruction, [54], 214
excuse from attendance at, 214

INSPECTORS,
additional, appointment of, 214
local, appointment of, 214
obstructing, 214
powers of, 214

INSTRUMENT OF GOVERNMENT,
articles of government contrasted with, [129 a]
contents of, [34], [36], 129
drawing up of time for, [74]
meaning of, 121
requirements as to, [33]

INSTRUMENT OF MANAGEMENT,
contents of, [34], 127
drawing up of time for, [74]
meaning of, 121
requirements as to, [33]

JOINT EDUCATION BOARDS,
composition of, [11], 271
constitution of, [73], 271
where probable, [272 G.N.]
establishment of, 250, 271
JOINT EDUCATION COMMITTEES,
establishment of, [12], 273
functions of, 273
JUNIOR PUPILS,
meaning of, [19], 256
separate schools for, desirability of, [95 c]
JUNIOR SCHOOLS,
segregation of sexes in, [20]
separation from infant schools, [19]
JUSTICES,
power to authorise entry on certain premises, [195 l]
JUVENILE COURT,
jurisdiction as to school attendance, 163
powers as to children in need of care and protection, [164 m]
JUVENILES, *see* YOUNG PERSONS.
KENYON-SLANEY CLAUSE, [50]
LAND,
assurances of, exemption from Mortmain Acts, 223
compulsory purchase of, [40], 226
changes in law as to, [227 G.N.]
power to hold, not conferred on divisional executives, [282 r]
sale of, 222
surplus, provisions as to, 226
LEAVE,
absence from school without, 161
meaning of, 161
LEAVING AGE, *see* COMPULSORY SCHOOL AGE.
LEGAL PANEL,
appointment of, 287
LEISURE-TIME OCCUPATION,
adult cultural activities, [170 g]
duty to provide, 164
LIABILITIES,
contingent, meaning of, [91 m]
meaning of, [91 l]
transfer of, 87
LIVERPOOL,
special agreements as to schools in, 284
LOANS,
consultations prior to making of, 246, [247 d]
power of Minister to make, 246
LOCAL EDUCATION AUTHORITIES,
administrative problems facing, [21]
articles of government to be made by, 121
constitution of, 87
contributions between, 248
councils to be, 87
discretion as to grouping, [131 G.N.]
disputes between, 203
managers or governors and, 203
duty as to Development Plans, 103
defective children, [66]

LOCAL EDUCATION AUTHORITIES—*continued*
duty as to divisional administration, 275
further education, [60], [61]
general, 164
schemes for, 170
preparation of agreed syllabus, 286
primary schools, 97
provision of meals and clothing, [62]
school buildings, 103
secondary schools, 97
training of teachers, 198
to appoint chief education officer, 225
ascertain children needing special educational treatment, [66], 154
consider reports of education committees, 273
constitute education committees, 273
establish and maintain county colleges, 170
furnish information as to medical services, 217
institute proceedings to enforce school attendance, 163
maintain, matters included in, 257
new schools, 109
make reports and returns, 228
schemes of divisional administration, 275
provide facilities for physical and social training, 187
recreation, 187
medical inspection, [64], 179
treatment, [64], *180*
nursery schools, 97
schools, [18], 97
special schools, 97, 151
transport, 190
recover cost of boarding accommodation, 186
clothing, *186*
secure provision of schools, 97
school attendance, 158
serve college attendance notices, 172
duplicate college attendance notice on employer, 176
school attendance order, 158
duties, summary of, [14–16]
exchange of information between, 176
experiment by, need for, [22]
fees not to be charged by, 196
former system of, [88 G.N.]
functions of, delegation to divisional executives, [280 G.N.]
unreasonable exercise of, 205
general principle to be observed by, 213
grouping of schools by, 130
joint education boards, 271, *see also* JOINT EDUCATION BOARDS.
land vested in, provisions as to, 226
managers to be appointed by, 127
meaning of, 256
new, [11]
officers transferred to, 88
power to accept gifts, 221
aid research, 220
appoint and dismiss teachers, 136
standing advisory council on religious matters, 146
cause making of inspections, 214
constitute joint education committees, 273
control secular instruction, 134
co-operate with voluntary societies, 187
delegate to education committees, 273
ensure cleanliness, [63], 188
establish schools, 100
grant scholarships, 219

LOCAL EDUCATION AUTHORITIES—*continued*
power to maintain schools, [18], 100
make grants to universities, 220
organise conferences, 220
pay fees, 219
maintenance grants, 219
travelling expenses, 191
prohibit employment of children, 194
provide ancillary services for pupils in non-maintained schools, [216
boarding accommodation, 184
clothing, 185
education otherwise than at school, 191
purchase land compulsorily, 226
previous law, [227 G.N.]
restrict employment of children, 194
powers as to use and care of voluntary school premises, 133
in default of, [31], 237
of, conversion into duties, [3]
summary of, [16, 17]
property transferred to, 87
provision of temporary assistance for voluntary schools by, **252**
returns to be made to, 218
right to inspect minutes, 132
rules of management to be made, by 121
school terms to be fixed by, [126 G.N.]
schools and colleges assisted by, definition of, 258
teachers as members of, [49]
transfer of interest in voluntary school premises to, 282
officers and property to, 231
exceptions from, 232
trusteeships prohibited, 221
White Paper proposals as to, [89 G.N.]

LOCAL EDUCATION ORDERS,
amendment of, [6], 108
annulment of, [7], 108
contents of, [6], 107
duties imposed by, limitations on, [109 n]
enforcement of, [108 c]
laying before Parliament, 108
making of, 107
meaning of, 256
special character of, [108 c]

LOCAL GOVERNMENT ELECTOR,
meaning of, 256, [261 h[1]]
right to inspect minutes, 274
of divisional executive, 277

LONDON,
applications to, 266

LORD CHANCELLOR,
appointment of legal panel by, 287

LORD PRESIDENT OF THE COUNCIL,
appointment of educational panel by, 287

McNAIR COMMITTEE,
respect of, [48], [199 G.N.]
as to conditions of service, [49]
teachers' remuneration, [49]

MAINTAIN,
meaning of, 256, 257

MAINTAINED SCHOOLS,
cleanliness of pupils in, power to ensure, 188
exclusion of unclean pupils from, 189
fees at, abolition of, 196
inspection of, [38]
kinds of, [264 m²]
meaning of, [264 m²]
medical inspection to be provided in, 179
treatment of pupils in, 180
primary, management of, [33]
provision of clothing for pupils of, 185
religious instruction compulsory in, [4]
secondary, government of, [33], [123 G N]
non-teaching staff, [126 G N]
special educational treatment in, 151

MAINTENANCE,
duty of, meaning of, 257

MAINTENANCE CONTRIBUTIONS,
in respect of aided and special agreement schools, 242
meaning of, 256

MANAGEMENT,
instruments of, *see* INSTRUMENTS OF MANAGEMENT.
simple, grouping of schools under, 130

MANAGERS,
appointment of, [34], 127
constitution of, 121
consultation with as to development plan, 104
discontinuance of voluntary school by, restrictions on, 112
discretion to appoint, former, [122 d]
disputes between local education authority and, 203
foundation, appointment of, 127
meaning of, 255
number of, 127
of special agreement schools, [30]
power to dismiss reserved teachers, 143
functions of, unreasonable exercise of, 225
meetings of, [35], 285
minutes of, 132
nomination by divisional executives, [281 G N]
objections to development plan by, [6]
of aided schools, foundation, number of, [28]
controlled schools, [25]
elementary schools, [32]
non-provided schools, [32]
primary schools, [33]
powers of, [36]
voluntary schools, control of buildings, 133
particulars of development plan to be submitted to, [5]
power of Minister to appoint in default, 237
powers of Minister in default of, [31], 237
proceedings of, [35], 132, 285
resignation of, [35], 132

MANDAMUS,
enforcement of directions by, [31], 237
failure to comply with, [238 g]

MARRIAGE,
of women teachers, [48], 136
previous law, [139 r]

MEDICAL EXAMINATION,
failure to submit to, penalty for, 206
for purpose of ensuring cleanliness, 188
of defective children, [66], [67], 154

MEDICAL EXAMINATION—*continued*
of mental defectives, 192
powers of Minister as to, 205
MEDICAL INSPECTION,
duty to provide, [64], 179
former, [180 G N]
history of, [180 G N]
meaning of, 256
of pupils in county colleges, 179
maintained schools, 179
non-maintained schools, 216
receiving education otherwise than at school, 216
powers of Minister as to, 205
pre-Act, system, [63]
supplementary provisions as to, 217
MEDICAL OFFICER,
definition of, 256
comprehensive nature of, [155 F]
order for cleansing by, [63], 189
MEDICAL TREATMENT,
free, duty to provide, [4], [64], 180
former, [180 G N], [181 G N.]
White Paper proposals as to, [180 G N]
meaning of, [64], 256
of pupils in non-maintained schools, 216
receiving education otherwise than at school, 216
supplementary provisions as to, 217
MEMORANDUM,
financial, 77
MENTAL DEFECTIVES, *see also* DEFECTIVE CHILDREN
education of, [67]
incapable of education at school, provisions as to, [67], 192, [193 C]
medical examination of, 192
reports to be issued as to, 192
requiring supervision after leaving school, provisions as to, 192
MENTAL DEFICIENCY AUTHORITIES,
reports to be made to, [67], 192
what are, [193 N]
MILK,
expenditure on, grant for, [71]
in schools scheme, [184 G N]
provision of, [62]
history of, [184 G N]
in non maintained schools, 216
power converted into duty [184 G N]
regulations as to, 183
White Paper proposals as to, [184 G N]
MINISTER OF EDUCATION,
annual report to Parliament by, 87
appeal to against college attendance notice, 174
appointment of first, [72], 83
Order in Council, [84 G N]
managers or governors by, 237
approval of agreements for transfer of interests in voluntary school premises [by, 282
plans for new schools, 110
special agreements by, 283
articles of government to be made or approved by, 121
assurances of land to be sent to, 221
certificate of, effect of, 86
classification of voluntary schools by, 113

MINISTER OF EDUCATION—*continued*
complaints to, [31], 205
confirmation of compulsory purchase order by, **226**
conflict between local authority and, [8]
corporation sole, to be, 83
directions of, enforcement by mandamus, [31], **237**
disputes to be referred to, 203
duty as to remuneration of teachers, 225
training of teachers, [49], 198
to determine disputes, 203
make local education orders, 107
orders as to county colleges, 170
regulations as to registration of pupils, 218
school buildings, 103
special educational treatment, **151**
supply of milk meals and refreshments, **183**
pay maintenance contributions, 242
promote education, 83
secure constitution of education committees, 250
expenses of, 249
first, [84 G.N.]
functions of, [8]
general principle to be observed by, 213
information to be furnished to, 228
jurisdiction over independent schools, 208
oaths to be taken by, 84
officers to be appointed by, 84
order of, postponing raising of compulsory school age, [250 G.N.]
power as to agreed syllabus, 286
complaints relating to independent schools, 210
establishment and discontinuance of schools, [39], 109.
further education, [60], 170
Joint Education Boards, 271
medical examinations and inspections, 205
schemes of divisional administration, 276
in default of local education authority, managers or governors, [7], [31], 237
to adjust variation of rates, 253
authorise provision of temporary assistance for voluntary schools, [252
direct local inquiries, 229
provision of transport, 190
establish joint education boards, 271
make grants in respect of voluntary schools for displaced pupils, [244
loans, 246
regulations as to county colleges, 170
form of college attendance notice, 176
grants, 239
modify trust deeds, 121
prevent unreasonable exercise of functions, 205
recommend appointment of inspectors, 214
veto appointment of chief education officer, 225
powers, new, summary of, [8]
proposals for establishment and discontinuance of schools to be submitted [to, 109
reports to be made to, 228
representations to, [252 a]
returns to be made to, 228
seal of, 86
authentication of, 86
status of, [8]
transfer of functions to, 85
property to, 85
transitional powers, 250

MINISTER OF HEALTH,
expenses of, 249
particulars of medical services to be furnished to, 217
power to make regulations as to grants, 239
MINISTER OF LABOUR,
training courses provided by, [58]
MINISTRY OF AGRICULTURE AND FISHERIES,
agricultural education, control of, [84 G.N.]
MINISTRY OF EDUCATION, *see also* MINISTER OF EDUCATION.
constitution of, [84 G.N.]
establishment of, [7], [13], [84 G.N.]
reconstitution, [7]
MINISTRY OF HEALTH,
poor law institutions, education in, controlled by, [84 G.N.]
MINISTRY OF LABOUR,
exchange of information with, 177
MINOR AUTHORITY,
appointment of managers by, 128
area in which there is, meaning of, [129 p]
meaning of, 256
MINUTES,
books containing, proper form of, [285 d]
of divisional executives, inspection of, 277
education committee, inspection of, 274
governors, 285
managers, 285
MODERN SCHOOLS,
establishment of, [2], [3]
MONMOUTHSHIRE, *see* WALES AND MONMOUTHSHIRE.
MORTMAIN ACTS,
effect of, [224 G.N.]
exemptions from, 223, 271
MULTILATERAL SCHOOL,
meaning of, [21]
NATIONAL ADVISORY COUNCILS,
for physical training, abolition, 187
suspension, [188 G.N.]
NATIONAL HEALTH SERVICE,
White Paper as to, [180 G.N.]
NATIONAL SOCIETY,
foundation of, [24]
schools, establishment of, [1]
religious instruction in, [50]
NEW SCHOOLS,
aided and special agreement, grants in respect of, 243, 244
loans in respect of, 246
establishment of, 109
maintenance of, 109
premises of, to conform to prescribed standards, 109
proposals for, 110
specifications and plans for, 110
voluntary, substitution of, 119
NON-MAINTAINED SCHOOLS, *see also* ASSISTED SCHOOLS, INDEPENDENT SCHOOLS
ancillary services, provision for pupils in, 216
kinds of, [110 e]
medical services in, [64], 216

NON-PROVIDED SCHOOLS,
buildings of, improvement of, [3]
conversion into voluntary schools, [25], 100
elementary, management, former, [122 G N]
use and care of premises, [133 G N]
erection of, cost of, [115 G N], [116 G N]
power of former authorities to assist, [29]
maintenance of, [115 G N]
managers of, [32]
number of, [115 G N]
objections to, [115 G N]
premises, defective, [115 G N]
problems as to, [115 G N]
size, average, [115 G N]
teachers in, appointment and dismissal, [136 G.N]
NORTHERN IRELAND,
Act not to extend to, 271
NORWOOD COMMITTEE,
report on curriculum and examinations in secondary schools, [21], [196 d]
NOTICE,
as to school attendance, 158
college attendance, *see* COLLEGE ATTENDANCE NOTICE
of approval of development plan, 105
complaint to proprietor of independent school, [69], 209
intention to discontinue voluntary school, 112
requiring cleansing, [63], 189
information as to employment of children, 194
proof that child receiving education, 158
service of, 254
proof of, [255 G N]
NURSERY CLASSES
arguments for and against, [19]
duty to provide, [19], 97
meaning of, [99 r]
NURSERY SCHOOLS,
duty to provide, [19], 97
meaning of, [19], 100
necessity for, [19]
obligations as to, [19], 97
schools to be known as, 100
self-contained, need for, [94 c]
special position of, [101 k]
White Paper proposals as to, [94 c]
OATHS,
to be taken by Minister, 83
OFFENCES,
acting as proprietor of or teacher in independent school while disqualified, 211
failure to comply with regulations as to registration of pupils, 218
secure regular school attendance, 163
submit to medical examination, 206
non compliance with college attendance notice, 174
school attendance order, 159
obstructing inspectors, 214
relating to employment of children, 194
OFFICERS,
appointed by Minister, remuneration of, 84
Chief Education, *see* CHIEF EDUCATION OFFICER
clerks to governors, [126 G N]
existing, compensation of, [92 s], 234
provision for determining, [235 r]
meaning of, [92 q], 234
terms and conditions of service, [92 s]

OFFICERS—*continued*
transfer of, 88
war service, preservation of rights during, 233
ORDERS,
as to establishment and maintenance of county colleges, 170
classifying voluntary schools, 113
revocation of, 114
constituting joint education board, 271
directing cleansing, [63], 189
for compulsory purchase of land, 226
Local Education, *see* LOCAL EDUCATION ORDER.
modifying trust deeds, 121
of Independent Schools Tribunal, 210
enforcement of, 211
registration of, 212
revocation of, 254
school attendance, *see* SCHOOL ATTENDANCE ORDER.
variation of, 254
PARENTS,
definition of, 256
duty of, former, [41]
to secure education, [4], [41], 157
how discharged, [158 h]
regular school attendance of registered pupils, 161
submit children for medical inspection, 179
failure by, to secure regular school attendance, penalty for, 163
meaning of, [41], [262 x[1]]
notice to, requiring proof that child receiving education, 158
right to choose school, [23]
to be named in attendance order, 158
rights as to religious instruction, [52], 139, [141 G N], 142, 144
wishes of, pupils to be educated in accordance with, [22], 213
to be consulted in selection of boarding accommodation, 184
PARLIAMENT,
annual report to, [10], 87
annulment of local education orders by, [7] 108
expenses to be defrayed out of moneys provided by, 249
local education orders to be laid before, 108
orders constituting joint education boards to be laid before, 272
regulations to be laid before, 254
PART-TIME EDUCATION,
meaning of, [170 f]
PENAL ESTABLISHMENTS,
inmates of, saving as to, 266
PENALTIES,
for acting as proprietor of or teacher in independent school while disqualified, [211
carrying on unregistered independent school, 207
failure to attend County College, [57], 177
obey school attendance order, 163
secure regular school attendance, 163
submit to medical examination, 206
making false statements 177
obstructing inspectors, 214
offences as to registration of pupils, 218
relating to employment of children, 194
repeated uncleanliness, 189
PERSONS OF UNSOUND MIND,
saving as to, 266

PETERBOROUGH,
Borough Council, special position, [11], [272 G.N.]
PHYSICAL TRAINING,
clothing for, provision of, [23], 187
facilities for, provision of, [23], [61], 187
history of, [187 G.N.]
PLANS,
for proposed new schools, approval of, 110
PLAY CENTRES,
provision of, [23], 187
PLAYGROUNDS,
provision of, [62], 187
PLAYING FIELDS,
included in definition of school premises, 256
provision of, [23], [62], 187
POWERS,
meaning of, [91 l]
PREMISES,
school, meaning of, 256
PRESCRIBED,
meaning of, 256
PRIMARY EDUCATION, *see also* PRIMARY SCHOOLS.
meaning of, [19], 97, 257
place in statutory system, 97
provision in separate schools, 97
otherwise than at school, 191
PRIMARY SCHOOLS, *see also* PRIMARY EDUCATION.
administration of, [34]
duty to secure provision of, 97
management of, [34], 127
changes in, main, [128 G.N.]
managers of, [33]
appointment of, 127
number of, [34], 127
powers of, [36]
meaning of, 257
references to, construction of, 258
reorganisation of, [2], [3]
rules of management of, [36], 121
transitional provisions as to, [73], 148
voluntary, managers of, appointment of, summary, [129 p]
PRIVY COUNCIL,
committee for education, [84 G.N.]
PROCEEDINGS,
for failure to secure regular school attendance, 163
non-compliance with college attendance notice, 177
school attendance order, 163
PROPERTY,
held by council, meaning of, [91 h]
meaning of, [90 f]
PROPOSALS,
for new schools, 110
PROPRIETOR,
duty to keep register of pupils, 218
meaning of, 218, 257
of independent school, appeal by, [70], 209
disqualification of, [69], 210
removal of, 212
notice of complaint to, [69], 209

PUBLIC LOCAL PURPOSES,
rates applicable to, exemption from, [202 d]

PUBLIC SCHOOLS,
Fleming report as to, [96 d]
history of, [23]

PUPILS,
displaced, meaning of, **245**
schools for accommodation of, provision of, 244
substantial number of, meaning of, [245 h]
voluntary schools established for, grants in aid of, **244**
in the area, meaning of, [106 r]
junior, meaning of, [19], 256
meaning of, 257, [262 g²]
registered, duty to secure regular attendance of, 161
meaning of, 257
registration of, 218
senior, meaning of, 257

QUORUM,
of managers or governors, 285

RATEPAYER,
meaning of, [261 h¹]

RATES,
adjustment of, [71], 253
application of endowments in relief of, [262 G N.]
divisional executives not to be empowered to raise, 276
education, increase of, anticipation of, [290 G N]
exemption of voluntary schools from, 201
general county purposes, meaning of, [290 e]
national rate expenditure, calculation of, [289 G N]
power to raise, [71]
rate advantage, meaning of, [289 G N]
transitional provisions as to, 253, 288
standard rate-borne expenditure, calculation of, 288
variation of, power to adjust, 253

RECREATION,
facilities for, duty to provide, [23], [61], 187

REFORM,
objects of, [83 G.N]

REFRESHMENTS,
supply of, regulations as to, 183

REGISTER,
of pupils, duty to keep, 218

REGISTERED PUPIL,
procedure for becoming to be prescribed, 218

REGISTRAR OF BIRTHS AND DEATHS,
information and returns to be furnished by, 230

REGISTRAR OF INDEPENDENT SCHOOLS,
appointment of, 206
duty of, 206
to strike certain schools off register, 211
particulars to be submitted to, 207

REGISTRATION,
of independent schools, [4], 206
exemption from, [69], 207
provisional, [69], 207
pupils, 218

REGULATIONS,
annulment of, 254
as to county colleges, 170
education in special schools, [66], 151
form of college attendance notice, 176
grants, 239
to be made by Minister of Health, 239
maintenance grants, 219
medical examinations and inspections, 205, 206
pupils requiring special educational treatment, 151
registration of independent schools, 207
pupils, 218
scholarships, 219
school premises, 163
special schools, 151
supply of milk, needs and refreshments, 183
to be laid before Parliament, 254
RELIGIOUS EDUCATION, *see also* RELIGIOUS INSTRUCTION.
standing advisory council on, 146
RELIGIOUS INSTRUCTION,
agreed syllabus *see* AGREED SYLLABUS.
attendance at, excuse from, 139
changes as to, [51]
compulsory, [4], 139
Cowper-Temple clause, [50], [115 G N], 142
denominational, hours of, [53]
provision of facilities for, [52], 140, 142, 144
withdrawal for, 140
disputes as to, determination of, 203
duty to give, 139
history of, [50]
in accordance with trust deed, 144
aided schools, [29] [53], 44
controlled schools, [25], [53], 144
county colleges, [54]
schools [52], 139, 142
non-provided schools, [51]
secondary schools, pre-Act, [51]
special agreement schools, [30], [53], 144
schools, [53], 152
training colleges, [54]
inspection of, [54], 214
excuse from attendance at, 214
Kenyon-Slaney clause, [50]
obligation to give, [54], 139
provisions as to, general, 139
summary of, [140 G.N.]
in special agreements, 284
standing advisory council to advise on, 146
times for, previous law, [51], [145 m]
training of teachers to give, [54]
withdrawal from, [51], 139, 140
school for, 140
REMUNERATION,
civil, of persons on war service, modification of enactments, 233
of teachers, 225
compensation for diminution, 234
REORGANISATION,
meaning of, [17]
REPEALS, 294
REPORTS,
as to mental defective, issue of, 192
duty to make, 228

RESEARCH,
power of local education authorities to aid, [61], 220
RESIDENCE,
meaning of, [249 l], [255 b]
RETURNS,
duty to make, 228
to be furnished by Registrars of Births, 230
RIGHTS,
meaning of, [91 l]
transfer of, 87
ROAD,
meaning of, [44]
ROUTE,
meaning of, [44]
RUGBY,
day continuation school system, [165 G.N.]
RULES,
as to practice and procedure before Independent Schools Tribunal, 212
RULES OF MANAGEMENT,
contents of, 134, 136
primary schools to be conducted in accordance with, 121, [123 q]
RURAL EDUCATION,
consideration by central advisory committee, [10]
SAVINGS,
as to Crown servants, 265
inmates of penal establishments, 266
persons of unsound mind, 266
position of teachers, 147
SCHEME,
for further education, *see* FURTHER EDUCATION.
SCHEMES OF DIVISIONAL ADMINISTRATION,
approval by Minister, 276
circular as to, [279 G.N.]
contents of, 276, [280 G.N.]
duty to make, 275
excepted districts, conditions of becoming, 276
fall of population in, effect of, 277
government statements as to, [278 G.N.]
schemes for, 276
exemptions from, 275
government policy relating to, [277 G.N.]
objections to, 276
publication of, [281 G.N.]
purpose of, [277 G N.]
revocation of, 277
variation of, 277
White Paper proposals as to, [277 G.N.]
SCHOLARSHIPS,
for further education, [61]
teachers, [48]
power to grant, 219
White Paper proposals as to, [219 G.N.]
SCHOOL ATTENDANCE,
canal boat children, [45]
compulsory, age limit for, [2], 155
children in special schools, [67], 160
introduction of, [2]

SCHOOL ATTENDANCE—*continued*
duty of parents as to, [42], [44], 157, 161
enforcement of, 163
excuses from, [44], 161
jurisdiction of juvenile court as to, 163
order, *see* SCHOOL ATTENDANCE ORDER
regular, duty of parent to secure, 157
enforcement of, [42], 163
failure to secure, 161
penalty for, 163
proceedings for, 163
stage performers, [46]
travellers, children of, [45], 161
truants, how dealt with, [45]
" walking distance " for purposes of, [44], 161
SCHOOL ATTENDANCE ORDER,
amendment of, 159
continuance in force, 159
disobedience to, [41], 159
penalty for, 163
proceedings for, 163
enforcement of, 159
meaning of, 158
notice prior to, 158
revocation of, 159
school to be named in, 158
SCHOOL BOARDS,
abolition of, [11]
duties of taken over, [2]
establishment of, [2], [24], [115 G N.]
SCHOOLHOUSE,
meaning of, [*262 z*[1]]
SCHOOL LEAVING CERTIFICATE, [20]
SCHOOL MEALS,
desirability of, [184 G N]
duty to provide, [50], [62], 183
expansion of service, [184 G N]
expenditure on, grant for, [71]
history of, [61], [184 G N]
preparation and service of, premises for to be supplied, [103 b]
provision in non-maintained schools, 216
regulations as to, 183
supervision of, [50]
SCHOOL MEDICAL SERVICES, *see also* MEDICAL EXAMINATION, MEDICAL INSPECTION, MEDICAL TREATMENT
incorporation in general health services, [181 G N.]
operation of, [181 G N.]
origin of, [180 G N]
personnel, [181 G N]
scope of, [181 G N]
White Paper as to proposals, [180 G N]
SCHOOL SESSION,
hours of, power to control, 134
SCHOOL SITES,
provision of, grants for, 246
sale of, [32], 222, [244 1]
consideration for to be brought into account, 244
SCHOOLS,
activities, meaning of, [220 1]
administration of, summary of, [23]
aided, *see* AIDED SCHOOLS
approved, [9], [84 G N]
assisted, *see* ASSISTED SCHOOLS.

SCHOOLS—*continued*
attendance, *see* SCHOOL ATTENDANCE.
Order, *see* SCHOOL ATTENDANCE ORDER.
autonomy, need for, [33]
boarding, *see* BOARDING SCHOOLS.
buildings, *see* BUILDINGS.
camps, provision of, [23], [62], 187
classification of, [5], [23], [38]
controlled, *see* CONTROLLED SCHOOLS.
county, *see* COUNTY SCHOOLS.
days, to begin with worship, 139
definition of, [18], 257, [263 j²]
limitation of, [98 o]
direct grant, see DIRECT GRANT SCHOOLS.
discontinuance of, [39], 109, 112
diversity of, Government policy as to, [197 G.N.]
education otherwise than at, power to provide, 191
elementary, *see* ELEMENTARY SCHOOLS.
establishment of, [39], 109, *see also* NEW SCHOOLS.
governors of, *see* GOVERNORS.
grammar, *see* GRAMMAR SCHOOLS.
grouping of, [35], 130
independent, *see* INDEPENDENT SCHOOLS.
infant, *see* INFANT SCHOOLS.
inspection of, *see* INSPECTION.
maintained, *see* MAINTAINED SCHOOLS.
managers of, *see* MANAGERS.
provision of, pre-Act, [61]
provisionally registered, definition of, 257
meals, *see* SCHOOL MEALS.
modern, [2], [3]
multilateral, [21]
new, *see* NEW SCHOOLS.
non-maintained, *see* NON-MAINTAINED SCHOOLS.
non-provided, *see* NON-PROVIDED SCHOOLS.
nursery, *see* NURSERY SCHOOLS.
premises, meaning of, 256
regulations as to, 103
primary, *see* PRIMARY SCHOOLS.
public, *see* PUBLIC SCHOOLS.
rating of, [32], 201
registered, meaning of, 257, [263 i²]
right of parents to choose, [23], [42]
secondary, *see* SECONDARY SCHOOLS.
senior, *see* SENIOR SCHOOLS.
special, *see* SPECIAL SCHOOLS.
agreement, *see* SPECIAL AGREEMENT SCHOOLS.
sufficiency of, duty to provide, 97
meaning of, [18]
terms, meaning of, [136 n]
transfer to new sites, simplification of procedure, [120 G.N.]
transport to, provision of, 190
types of, summary of, [38]
voluntary, *see* VOLUNTARY SCHOOLS.

SCILLY ISLES,
application to, 267
council of, [267 G.N.]

SCOTLAND,
Act not to extend to, 271

SEAL,
of Minister of Education, 86

SECONDARY EDUCATION, *see also* SECONDARY SCHOOLS.
changes as to, summary of, [96 d]
government policy as to, [95 d]
meaning of, 97, 257
place in statutory system, 97
provision in separate schools, 97
SECONDARY SCHOOLS, *see also* SECONDARY EDUCATION.
administration, [34]
admission to, [20]
agreed syllabus for use in, [259 b]
aided, grants in respect of existing liabilities, 203
articles of government of, *121*
classification of, changes in, [124 G.N.]
curriculum of, [20]
revision of, [96 d]
Direct Grant, number of, [96 b]
duties as to, 97
" efficient ", recognition of independent schools as, [68]
expulsion from, [146]
fees, government policy, [197 G.N.]
governors of, [21], [32], 129
grouping of, [35], 130
history of, [1], [23]
maintained, admission of pupils, [127 G.N.]
appointment and dismissal of staff, [125 G.N.], [126 G.N.]
caretakers and maintenance staff, [126 G.N.]
clerks to governors, [126 G.N.]
curriculum, [126 G.N.]
extra-district pupils, [127 G.N.]
finance, [125 G.N.]
governors, composition of, [124 G.N.]
constitution of, [124 G.N.]
numbers of, [125 G.N.]
grouping of, [125 G.N.]
headmaster or headmistress, appointment, [125 G.N.]
dismissal, [125 G.N.]
holidays, [126 G.N.]
instruments of government, [33]
management, former, [122 G.N.]
organisation, internal, [126 G.N.]
principles of government, [123 r]
teaching staff, [125 G.N.]
meaning of, 257
extension of, [124 G.N.]
former, [20]
multilateral, [21]
Norwood report on curriculum and examinations, [96 d]
references to, construction of, 258
religious instruction in, pre-Act, [51]
Spens report on, [96 d]
transfer of potential teachers to, [200 G.N.]
transitional provisions as to, *[73], 148*
types of, [21], [95 b]
voluntary, existing, financial changes as to, [117 G.N.]
management, former, [122 G.N.]
White Paper on principles of government, [123 r]
proposals as to, [95 d]
SECULAR INSTRUCTION,
control of, 134
in voluntary schools, not to interfere with religious instruction, 140
meaning of, [135 e]
SENIOR PUPILS,
meaning of, [21], 257, [264 r²]
transfer from one type of school to another, [21]

SENIOR SCHOOLS,
history of, [95 d]
reorganisation of, [2], [3]
selective, [20]
curriculum, [21]

SERVICE,
of notices, 254

SEX EDUCATION,
duty to provide for, [97 h]

SITES,
school, sale of, 222

SOCIAL TRAINING,
facilities for, duty to provide, [23], [61], 187
history of, [187 G.N.]

SPECIAL AGREEMENT,
approval of, 283
grants pursuant to, 284
repayment of, 284
meaning of, 257
power to make, 283
provisions as to religious instruction in, 284
time for making, 283
transitional provisions as to, 284
variation of, 284

SPECIAL AGREEMENT SCHOOLS,
administration, [30]
caretakers of, 133
conversion into aided schools, [31], 114
controlled schools, 114
governing body, [30], 127, 129
loans to, [30], 246
conditions of making, [247 d]
maintenance contributions in respect of, [30], 242
of, 114
cost of, [117 G.N.]
primary, managers of, 127
provisions as to, summary, [117 G.N.], [118 d]
religious instruction in, [30], [53], 144
secondary, governors of, 129
secular instruction in, 134
substituted, grants in respect of, 243
teachers in, appointment and dismissal, [30], 136, [137 G.N.]
" reserved ", [30], 145, [146 p], 284
transferred or substituted, grants in respect of, 243

SPECIAL EDUCATIONAL TREATMENT, *see also* SPECIAL SCHOOLS.
advisory committee as to, [68]
children needing, classes of to be defined, [66], 151
duty to ascertain, 154
Development Plans to provide for, [65]
duty to provide, 97, 151
meaning of, 257
regulations as to, 151

SPECIAL PLACES,
abolition of, [4]

SPECIAL SCHOOLS,
accommodation in, lack of, [153 h]
attendance at, compulsory, [66], 160
boarding accommodation, [67]

SPECIAL SCHOOLS—*continued*
boarding out of pupils, [67], **184**
conditions of approval, **151**
leaving age, [42], 160
meaning of, 100
non-maintained, assistance of, [67]
primary or secondary, may be, [102 I]
provision of, [22], [65], 97, [99 S], **151**
pre-Act, [65]
pupils of, attendance at worship, **151**
expenses of, [67]
regulations as to, **151**
religious instruction in, [53], [66], **151**
segregation of younger from older children in, [65]
vacancies in, position where no, [153 H]
SPECIFICATIONS,
for proposed new schools, approval of, 100
STAFFING, *see also* TEACHERS.
standard of, not laid down, [98 G.N.]
STAGE,
performers, child, education of, [46]
STANDING ADVISORY COUNCIL,
on religious matters, **146**
STATUTES, *see* ENACTMENTS.
STATUTORY DECLARATION,
in support of claim for compensation, **[236 R]**
STATUTORY SYSTEM,
stages and purposes of, 93
SUNDAY SCHOOL,
attendance at, not to be compulsory, [52], **139**
SUPERANNUATION,
modification of enactment relating to, **233**
SWIMMING BATHS,
provision of, [23], [62], 187
SYLLABUS,
agreed, *see* AGREED SYLLABUS.
TEACHERS,
appointment of, [47], 136
in aided schools, [28], 136
controlled schools, [25], 136
maintained secondary schools, [125 G.N.]
special agreement schools, [30], 136
previous law, [136 G.N.]
summary of new law, [137 G.N.]
certificated, [47]
conditions of service, improvement of, [49]
dismissal of, [47], 136
in maintained secondary schools, [125 G.N.]
previous law, [136 G.N.]
summary of new law, [137 G.N.]
domestic science, [47]
duties as to milk and meals, [50], 183
dwelling-houses, not included in definition of school premises, **256**
emergency training and recruitment of, scheme for, [48]
centres, [74]
functions out of school hours, [50], 183
handicraft, [47]
in discontinued schools, compensation of, [74]
independent schools, allegations of, unfitness of, 209
disqualification of, 210
removal of, 212

TEACHERS—*continued*
in maintained secondary schools, [125 G.N.]
McNair report as to, [48], [119 G.N.]
married women, [48], 136
previous law, [139 z]
membership of education authority, [49]
non-attendance at worship not to disqualify, 147
number of, increase of, [48]
on war service, civil remuneration of, 233
potential, continued education of, [200 G.N.]
prejudicially affected, compensation of, [74], 234
" qualified ", [49]
quality of, importance of, [47]
redundant, compensation of, [74], 234
provisions for determining, **[235 r]**
religious freedom, [54], 147
remuneration of, [49], 225
Burnham Committee, [225 G.N.]
compensation for diminution of, **234**
during war service, 233
" reserved ", [26]
in controlled schools, [53], 143
head teacher not to be, 143
special agreement schools, [30], **145, 284**
meaning of, 143, [146 p]
position of, [137 G.N.]
saving as to position of, 147
scholarships for, [48]
service on Divisional Executive, [49]
superannuation of, [233 a]
supplementary, [47]
supply of, measures to secure, [199 G.N.]
training of, [47]
Board of Education circular as to, [199 G.N.]
development of, [199 G.N.]
duties as to, [49], 198
in religious instruction, [54]
length of, recommendations as to, [49]
McNair Committee's recommendations as to, **[49]**
members of H.M. Forces, [200 G.N.]
previous law, [199 G.N.]
report on, [199 G.N.]
scholarships for, [48]
short-term policy, [200 G.N.]
White Paper proposals as to, [198 G.N.]
types of, former, [47]
uncertificated, [47]
women, marriage of, [48], 136, [139 z]
TECHNICAL EDUCATION, *see also* TECHNICAL SCHOOLS.
colleges, need for improvement, [59]
courses, types of, [59]
Departmental Committee on, [59]
history of, [1]
necessity for, [166 G.N.]
pre-Act, general survey, [59]
standard of, present, [166 G.N.]
trade courses, [59]
TECHNICAL INSTRUCTION COMMITTEES,
abolition, [11]
TECHNICAL SCHOOLS, *see also* TECHNICAL EDUCATION.
junior, [20]
inception of, [96 d]

TECHNICAL SCHOOLS—*continued*
junior, management, former, [122 G.N.]
Spens report recommendations as to, [20]
TERMS,
school or college, attainment of age during, 258
power to fix, 134
TITLE,
short, 271
TOWN AND COUNTRY PLANNING, [200 G.N.]
TRADE COURSES, [59]
TRAINING CENTRES,
emergency, establishment of, [48]
TRAINING COLLEGES,
history of, [199 G.N.]
powers as to, *198*
provision of, [50]
religious instruction in, [54]
TRANSITIONAL PROVISIONS,
as to agreed syllabus, 258
compulsory school age, 258
continuance of legal proceedings, 232
further education, [74], 178
management and maintenance of voluntary schools, 150
rates, 253, 288
references to primary and secondary schools, 258
schools closed on account of war damage, 258
separation of primary and secondary schools, 148
special agreements, 284
temporary assistance for voluntary schools, 252
transfer of functions, 231
voluntary schools, [118 n]
facilitating commencement of Part II, 250
financial, [71], [77]
general, summary of, [72]
TRANSPORT,
duty to provide, [43], 190
safety of pupils for whom provided, [191 G.N.]
TRAVELLING EXPENSES,
power to pay, 191
TRIBUNAL,
independent schools, *see* INDEPENDENT SCHOOLS TRIBUNAL.
TRUANCY,
habitual, how dealt with, [45]
TRUST DEEDS,
determination of questions in accordance with, 203
meaning of, 257, [264 u²]
modification of, 121, 202
power of, necessity for, [123 s]
UNEMPLOYMENT,
juvenile, [58]
UNIVERSITIES,
assistance of, [61], 220
schools of education, [49]
UNSOUND MIND,
persons of, saving as to, 266
URBAN DISTRICT COUNCIL,
exercise of functions of divisional executive, 276
VERMIN,
powers as to disinfestation, 188

VOCATIONAL EDUCATION,
history of, [1]

VOLUNTARY SCHOOLS,
aided, *see* AIDED SCHOOLS.
caretakers of, 133
categories of, [25]
classification of, [73] 113, [116 G N]
order for, revocation of, 114
to be made by Minister, 113
transitional provisions prior to, 150
control of buildings, [134 G N]
controlled, *see* CONTROLLED SCHOOLS
discontinuance of, [39], [40], 109
conduct by local authority pending, 112
restrictions on, 112
discontinued, substitution of new schools for, 119
endowments, application of, 202
establishment of, 109
for displaced pupils, grants in respect of, 244
governors of, power of Minister to appoint, 237
grouping of, [35], 130
consent to, 130
instruments of management or government, [34], 121
loans to, 246
conditions of making, [247 d]
maintenance contribution in relation to, meaning of, 256
of, endowments for, 202
expenses of, 113, 114
powers of managers in default of local education authority, [238
managers of, power of Minister to appoint in default, 237
meaning of, 100, [117 a]
medical inspection and treatment in, [64], 180
new, establishment of, [39]
specifications and plans for, 110
substitution of, 119
non-provided schools to become, 100
premises of, use and care of, 133
transfer of interest in, 282
primary, managers of, appointment, summary, [128 G.N.] .
constitution of, 127
rules of management, 121
purchase of land for, [40]
rating of, [32], 201
registration of pupils, 218
religious instruction in, [52], 139
secondary, articles of government of, 121
management of, former, [122 G.N.]
secular instruction in, [36], 134
special agreement, *see* SPECIAL AGREEMENT SCHOOLS.
substituted, grants in respect of, 243
teachers in, married women, 136
temporary assistance for, 252
transfer to new sites, 119
transitional provisions as to, [73], 148
management and maintenance, 150
unclassified, to be controlled schools, 114

VOLUNTARY SOCIETIES,
co-operation with, 187

VOTING,
meaning of, [285 c]

WALES AND MONMOUTHSHIRE,
Central Advisory Council for, [76], 86
Welsh Board, 241
conference for preparation of agreed syllabus, constitution of, 286
education in, special features, [75]
special financial provisions relating to, 241
WALKING DISTANCE,
meaning of, [44], 161
WAR DAMAGE,
schools closed on account of, transitional provisions as to, 258
WAR SERVICE,
meaning of, [233 c]
officers and teachers on, modification of provisions as to, 233
WHITE PAPER ON EDUCATIONAL RECONSTRUCTION,
criticisms of non-provided schools, [115 G.N.]
proposals as to adult education, [167 G.N.]
application of endowments, [202 G.N.]
district education committees, [277 G.N.]
further education, [165 G.N.]
independent schools, [207 G.N.]
local education authorities, [89 G.N.]
medical services, [180 G.N.]
nursery schools, [94 c]
parental duty, [157 f]
religious instruction, [140 G.N.], [141 G.N.]
scholarships, 219
secondary schools, [95 d]
supply of clothing, [185 G.N.]
technical education, [166 G.N.]
training of teachers, [198 G.N.]
Youth Service, [167 G.N.]
of, modication of, [83 G.N.]
WHITE PAPER ON NATIONAL HEALTH SERVICE,
proposals as to school medical services, [180 G.N.]
WHITE PAPER ON PRINCIPLES OF GOVERNMENT IN SECONDARY SCHOOLS, [
text of, 123–127
WOMEN,
governors of girls' secondary schools, [35]
married, teachers, [48], 136
WORKERS' EDUCATIONAL ASSOCIATION, [60], [166 G.N.]
WORKSHOP COURSES, [59]
WORSHIP,
act of, collective, in county schools, not to be denominational, 142
school day to begin with, [4], [51], 139
attendance at by pupils in special schools, [66], 151
excuse from, 139
freedom of teachers as to, [54]
non-attendance at not to disqualify teachers, 147
place of, attendance at, not to be compulsory, [52], 139
withdrawal from, 139
YOUNG PERSONS,
appeals to Minister by, 174
change of address of, notification, [57], 176
employment of, notification of, [58], 176
college attendance notices, *see* COLLEGE ATTENDANCE NOTICE.
colleges for, *see* COUNTY COLLEGES.
duty to notify change of address, 176
employment of, 194
fees for board and lodging for, 196
further education of, *see* FURTHER EDUCATION.

YOUNG PERSONS—*continued*
in need of care and protection, 163
living on canal boats, [177 g]
meaning of, 257
offences by, as to college attendance, 177
preferences by, expression of, 173
serving at sea, further education of, [165 G.N.]
unemployed, [58]
working hours of, computation of, 195
YOUTH ADVISORY COUNCIL,
report of, [168 G.N.]
YOUTH SERVICE,
object of, [167 G.N.]
report of Youth Advisory Council, [168 G.N.]
White Paper proposals as to, [166 G.N.]