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The Education Act, 1944

1--(L.78)

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*The Law of Educational Endowments in Australia, Canada, New Zealand, South Africa and in the U.S.A. ;
*The Law of Educational Endowments in Scotland, Wales, Eire and Northern Ireland ;
The Children and Young Persons Act, 1933 ;
*Suggestions for a 1943 Education Act [a Draft Bill] ;
Joint Author of—
  Compendium of Precedents, Judgments, etc., in connection with the Education Acts ;
  *Changes in the Education Act, 1921 and in the Children Act, 1908 ;
  *Education Act, 1936.

† *Published before changing over from the Training of Teachers to Administrative work in Education, when the 1902 Education Act came into operation in 1903.*
* *Published after retiring.*

THE EDUCATION ACT
1944

WITH EXPLANATORY NOTES

BY

ALFRED E. IKIN, B.Sc., LL.D.

Formerly Director of Education, Blackpool

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PUBLISHERS' FOREWORD

The Publishers very much regret the death of Dr. Ikin, which occurred suddenly on 26th November, 1944, while this, the last of his many works dealing with education law, was in an advanced state of production. There only remained a few galley proofs and the page proofs to be corrected and an Index prepared. This task has been kindly undertaken by Mr. H. C. Sparke, Barrister-at-Law, who had on previous occasions collaborated with Dr. Ikin in the preparation of reference books on education law and practice.

Dr. Ikin will be greatly missed by those engaged in administering education law, for apart from his publications on the subject, his services were frequently placed at the disposal of those in difficulties over the interpretation of complicated provisions of the Education Acts and Orders. The Publishers feel confident that administrators will welcome Dr. Ikin's commentary on this important measure of educational reconstruction.

The Publishers have been faced with the problem of dealing with the ever-increasing output of subsidiary legislation. To have printed all these Orders, Regulations, Circulars, etc., in full, would have added inordinately to the bulk of the book, nor was it Dr. Ikin's intention. A full list of Orders, Regulations, Circulars, etc., which have been published up to the time of going to press, has been compiled and appears as Appendix F. It is hoped that this will be of assistance to readers who wish to consult these Government publications.

In conclusion, the Publishers offer their apologies for the delays which have beset the publication of this book. Apart from the death of Dr. Ikin, which in itself was a major calamity, the printers suffered serious damage from enemy action in which some of the set type was destroyed and production was held up for several weeks. This delay has rendered a few notes on the Act out of date, but as this has not materially affected the incidence of the commentary it was decided not to alter the text.

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THE EDUCATION ACT, 1944

7 & 8 Geo. 6. CH. 31.

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

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 :—

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, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area.

The object of this Act is stated to be " To *reform* the law relating to education in England and Wales (i.e. to re-form or re-shape the law). The aim is to create what has not so far existed in this country—*a national policy for education.*

With this object in view, the ground has been cleared by the repeal of many of the existing enactments, in whole or in part, and the incorporation of what has been of proved value with arrangements for improvements for the future. The following Acts have been wholly repealed.

The Education Act, 1921 ;
The Education (Institution Children) Act, 1923 ;
The Education (Local Authorities) Act, 1931 ;
The Education (Necessity of Schools) Act, 1933 ;
The Education Act, 1936 ;
The Education (Deaf Children) Act, 1937 ;
The Senior Public Elementary Schools (Liverpool) Act, 1939 ;
The Education (Emergency) Act, 1939.

The Board of Education is raised to the status of a Ministry, and the functions of the Board are transferred to the Minister, but the functions of the Minister will be wider than the Board had possessed since it was appointed in 1899. These are defined in Section 1 of this Act.

An Order in Council dated 10th April, 1839, created a " Committee of the Privy Council on Education " to *superintend the application of any sums voted by Parliament* for the purpose of promoting public education.

Section 1 (1) of the *Board of Education Act, 1899*, stated : " There shall be established a Board of Education *charged with the superintendence of matters relating to education* in England and Wales."

As mentioned, the present Act gives much wider powers to the Minister of Education. The following duties of the Minister are specified in Section 1 :—

(i) to promote the education of the people of England and Wales ;

(ii) to promote the progressive development of institutions devoted to that purpose ; and

(iii) 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 each area.

In (i) and (ii) above, the duty of the Minister is to *promote* not merely *superintend.* This *promoting* education, and the development of necessary institutions, empowers the Minister to take the initiative in providing some form of educational institution for special research or for other work conducted under his own control, or to collaborate with persons or organisations other than local authorities. Section 42 (4) gives opportunities for variations of combinations of different agencies for further education, and Section 100 (1) (*b*) empowers the Minister to make grants to such organisations or *persons* for educational services rendered, or to be rendered.

Under (iii) above, it is intended that the power entrusted to the Minister should assist in obtaining a real development in education by a kind of partnership between the local and central authorities. Reorganisation of schools and the remedying of bad conditions of school premises have proceeded very slowly in the past : under the new machinery for the administration of education, the Local Education Authority *must* prepare their development plan (Section 11) to remedy such matters ; and when the Minister has approved the plan, he will (Section 12) make an order, and *it will be mandatory for the Authority to carry out that plan.* It will be the duty of the Minister to promote and secure the effective execution of the national policy through the local education authorities working " *under his control and direction.*"

The 1870 Act contained 100 sections and 5 schedules.
The 1902 Act contained 27 sections and 4 schedules.
The 1918 Act contained 52 sections and 2 schedules.
The 1944 Act contains 122 sections and 9 schedules.

(2) The Minister shall for all purposes be a corporation sole 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.

A *corporation sole* consists of one person only and his successors. The rights acquired by the Minister of Education in his capacity as an Officer of the Crown devolve upon his successor in office, and not upon his ordinary legal representatives.

The Minister of Education has various powers delegated to him by this Education Act: He is empowered to decide questions which may arise, between the Local Education Authority and School Managers or Governors, between different L.E.A.s and between the Local Education Authority and a "divisional executive," constituted under Part III of the First Schedule of this Act.

In the case of persons such as the Minister of Education, or tribunals, which are not strictly courts, but which exercise functions more or less judicial, the strict rules of evidence which are applicable in a Court need not be observed. The manner of receiving evidence may vary according to the nature of the tribunal: the Minister of Education may investigate facts requiring reasonable proof in such manner as he thinks fit. In *West Suffolk County Council* v. *Olorenshaw*, [1918] 2 K.B. 687, it was decided that the legislature in appointing the Board as the statutory tribunal, meant that it should be the sole tribunal, and that the jurisdiction of the ordinary Courts was ousted.

The wide powers granted to the Board were brought out by the House of Lords decision in *Board of Education* v. *Rice*, [1911] A.C. 179. It was then admitted that both issues of law and of fact fell to be decided by the Board, and that it must act fairly in the sense of hearing both parties, giving both the opportunity to correct or contradict statements prejudicing their case. But it was not demanded that the Board should proceed in the manner of a court of law, for it had no power to impose an oath and need not examine witnesses.

This decision as to the powers of an executive authority to whom the right of deciding administrative issues had been committed was followed in *Local Government Board* v. *Arlidge*, [1915] A.C. 120. Here an appeal was brought on the ground that the appellant had not been heard personally by the Officer conducting the inquiry. The House of Lords declined to admit the injustice of the Ministerial procedure, merely insisting that inquiry and decision should be conducted in a judicial spirit, but not necessarily by judicial procedure.

These cases show that there is little room for judicial intervention in Ministerial procedure, unless there should be a question raised of excess of jurisdiction.

> "*Mandamus* lies to ministerial officers to require them to perform duties which they owe to members of the public, but will be granted only if no efficacious remedy exists, as for instance a claim in tort against the negligent officer.
>
> It will not be used against judicial or quasi-judicial officers in the sense of interfering with their discretion, but it is available to require them to deal with a case and carry out their decisions (*R. v. Boteler* [1864] K. and L. p. 198). It will not lie against the Crown or a Minister who closely represents the Crown." [Keith: *British Constitutional Law*.]
>
> Although Section 7 of the *Ministry of Health Act, 1919*, states "the Minister may sue and be sued"—and Section 26 of the *Ministry of Transport Act, 1919*, states—"the Ministry may sue and be sued in respect of matters, whether relating to contract tort or otherwise in connexion with his office" there are no words in this Act stating that the Minister of Education may "sue or be sued."

(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, 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.

The *Board of Education Act, 1899*, in Section 6 (2) stated " . . . and [there shall be paid] to the secretaries, officers and servants of the Board such salaries or remuneration as the Treasury may determine."

The *Ministers of the Crown Act, 1937*, stated " in subsection (2) of Section 6 of the *Board of Education Act, 1899*, after the word ' secretaries ' insert the words ' other than the Parliamentary Secretary '."

This takes away from the Treasury the power to fix the payment to the Parliamentary Secretary, which is fixed by Parliament itself (at present £1,500 per annum) but leaves his appointment in the hands of the Minister.

The Minister is solely responsible for the whole of his Department's administration, and he takes the credit, or discredit, for everything done by it.

The Staff of the Ministry is under his control, but questions as to numbers and remuneration require the consent of the Treasury, which consent again is to some extent subject to statutory control.

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

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 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.

The first appointment of a Minister of Education was declared by an Order in Council on the 10th August, 1944. The date fixed by the Order in Council for such appointment was the date for the automatic transfer to the Minister of all rights and liabilities as specified in this section, and in accordance with Section 121 of this Act, the *Board of Education Act, 1899*, was repealed from the same date, and also Sections 1 and 2 of the *Education Act, 1921*.

(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.

The above is a reproduction in substance of Subsection 2 (2) of the *Board of Education Act, 1899*, except that the 1899 Act made reference to both powers of the Charity Commissioners, and *of the Board of Agriculture* being transferable to the Board of Education. Various powers of the Charity Commissioners have been transferred to the Board of Education by Orders in Council :

The *Board of Education (Powers) Order in Council*, 1900, came into operation on 1st November, 1900, and provided for the *concurrent* exercise of certain powers of the Charity Commissioners by the Board of Education :

A second *Order in Council*, 1901, came into operation on 1st September, 1901, which transferred *additional powers* from the Charity Commissioners to the Board of Education :

A third *Order in Council*, 1902, completed the transfer to the Board of *all powers*, relating to endowments held solely for educational purposes, which had not already been transferred, *except* the powers of appointing the " Official Trustee of Charitable Funds," and of making orders for vesting or transferring lands or funds in, to, or from the " Official Trustee of Charitable Lands " or the " Official Trustees of Charitable Funds."

Section 45 of the *Education Act, 1918* (see Appendix A) gave power to constitute " Official Trustees of *Educational* Trust Property," but no Order in Council has yet been made under this section [which is one of the few parts of the 1918 Act not repealed, nor incorporated in this (1944) Act].

No transfer of powers from the Board of Agriculture to the Board of Education under the 1899 Act have been made but now there is to be mutual co-operation between the two Ministries for Agriculture and Education. When (19th January, 1944) moving the Second Reading of this (1944) Bill, Mr. Butler stated :

" Coming to agricultural education, I am glad to say that my Right Honourable Friend the Minister of Agriculture and I see eye to eye on this matter. We agree that the technical agricultural education for the young, excluding higher education at University Departments of Agriculture, shall properly be regarded as falling within the sphere of the general education service. It has been decided that this should be the responsibility of the Local Education Authorities, *as in the case of technical education for other industries*."

The following day, Mr. Hudson, the Minister of Agriculture, enlarged upon this, outlining the proposals which will be included in a Bill which he proposed to introduce at an early date. He said that having carefully considered the Luxmoore Report on this subject, and representations sub-

mitted by the County Councils Association and other interested bodies, the conclusions the Government have reached are as follow :—

"*Firstly.*—The Provincial and County Advisory Services should be unified and combined into a National Service for the whole country *directly under the Minister of Agriculture*, and *financed wholly by the Exchequer* :

Secondly.—. . . the Government have decided that, having regard to the importance not least in the interests of agriculture itself, of integrating agricultural education with the general educational structure of the country as proposed in the [Education] Bill now before this House, *the provision of agricultural education at the farm institute level and below, should remain a function of the local authority, but in its capacity as a local education authority, and on a mandatory basis, instead of permissive as at present.* At the same time, in view of the close relationship which must subsist between agricultural education and the National Advisory Service, agricultural education will call for some special treatment within the general framework, and for the same reason *will continue to be grant-aided through the Ministry of Agriculture.*

A Joint Advisory Committee will be set up by the Ministry of Agriculture and the Ministry of Education to advise on general educational policy and methods of training at farm institutes. The education offered at the institute will be inspected by His Majesty's Inspectors of the Ministry of Education, so far as concerns all subjects *other than the theory and practice of agriculture* which will be the province of my Department. The Institutes will be inspected by inspectors of the Ministry of Education as well as by inspectors of the Ministry of Agriculture." (See below for appointment of this Committee.)

On 15th April, 1944, the Minister of Agriculture, when stressing the importance of education for agriculture, said :—

"An efficient farmer to-day had to be something of a scientist, something of a mechanic and an engineer, something of a veterinary surgeon, something of an administrator and an accountant and something of a salesman as well as a farmer. A comprehensive system of agricultural education for the farmer of the future was one of the foundation stones of a healthy and well balanced industry.

The foundation had to be laid in the schools. For those who intended to enter farming as a career there had to be adequate provision of regular technical education after they left school. Those who aimed at a career in agricultural research, teaching, or advisory work, or who expected to be farmers in a big way, must go to a higher centre of education, a University, or an Agricultural College for specialised knowledge.

The great majority of those for whom training had to be provided were the future skilled workers and farmers. *The most suitable training for them was that provided by a farm institute,* whose purpose was to give a sound training in the scientific principles underlying good farming and in modern agricultural practice. *We needed many more farm institutes* if this type of training was to be available for all who wanted it and could profit by it." (*Times Educational Supplement*, 22nd April, 1944.)

The Second Reading of the *Agriculture* (*Miscellaneous Provisions*) *Bill, 1944*, was taken on 16th May, 1944. The Minister of Agriculture then stated :—

"I referred earlier to our decision to reject the Luxmoore proposal, in spite of the great administrative advantages it offered, that farm institutes should be put under central control. We did that because *we want to keep agricultural education closely integrated with the general body of education.* It is equally important to ensure that agricultural education is not divorced from the service and advice and guidance given to the industry, and we shall be at pains to see that the agricultural education interests and the activities of the advisory service are not kept in separate watertight compartments. I hope that it will be possible in due course to provide for a steady interchange of teachers and personnel between the two services. *Under the Education Bill which has just received its Third Reading, the local authorities will be under*

compulsion to provide a service of agricultural education, and the most important feature of that will be a farm institute in every county. I hope in course of time we may be able to get more than one farm institute in the larger counties."

On 21st June, 1944, the Minister of Agriculture announced that together with the President of the Board of Education he had appointed a Committee to advise on *agricultural education which should be provided by local education authorities*, and particularly on the educational policy and methods of training to be adopted at farm institutes. This Committee will be a permanent body *to advise both Ministers* within the terms of their reference on matters of agricultural education up to the farm institute level. Another Committee, he said, has been appointed to consider the character and extent of the need for higher agricultural education in England and Wales.

3. Seals 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 Minister of Education or of any person authorised by the Minister to authenticate the seal.

(2) The seal of the Minister shall be officially and judicially 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.

(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.

(4) The Documentary Evidence Act, 1868, 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 subsection (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.

The change in the status of the Ministry was marked by the granting of an official Seal for the Minister.

See Note on Part I of the First Schedule to this Act concerning the object and purpose of a Seal.

The Minister took the usual oaths of a Minister [see Section 1 (4) above] when he was appointed and received his Seal from His Majesty the King.

By the *Documentary Evidence Act, 1868*, evidence of any order or regulation issued by the Privy Council, or by or under the authority of any such Department of the Government or officer *as is mentioned in the first column of the Schedule to the Act*, may be given in all courts of justice, and in all legal proceedings, by the production—

(1) of the *London Gazette* containing a copy of the order or regulation ; or
(2) of a copy of the order or regulation purporting to be printed by the Government printer ; or
(3) in the case of an order or regulation issued by the Privy Council of a copy or extract purporting to be certified to be true by the clerk of the Privy Council, or by someone of the Lords or others of the Privy Council, and in the case of any order or regulation issued by or under the authority of any of the departments as above referred to, of a copy or extract purporting to be certified to be true by *the person or persons specified in the second column of the Schedule* in connection with such department or officer.

It will not be necessary to give any proof of the handwriting or official position of any person certifying in accordance with the Act, to the truth of any copy of or extract from an order or regulation.

This 1944 Act makes the 1868 Act conditions applicable to the Ministry of Education.

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.

(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.

(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.

(4) The Minister shall by regulations 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.

By Section 4 of the *Board of Education Act, 1899*, a " Consultative Committee " was to be appointed :—

(*a*) to frame a Register of Teachers ; and
(*b*) to advise the Board of Education *on any matter referred to the Committee by the Board.*

Several valuable reports have been prepared at various times on matters so referred : e.g. the " Hadow " Report (1926) on the Education of the Adolescent, and later the " Spens " Report.

Section 2 of the *Education Act, 1921*, stated " There shall continue to be a ' Consultative Committee ' for advising the Board of Education on matters referred to the Committee by the Board."

By Section 121 of this Act, this Section 2 of the 1921 Act was repealed from the date when the first appointment of a Minister of Education was declared and that Committee ceased to exist from that date. The main

body of the 1921 Act will be repealed by the Ninth Schedule of this Act, on 1st April, 1945.

By this 1944 Act the Central Advisory Councils to be appointed will have wider powers than were granted to the Consultative Committee. These Advisory Councils are not restricted to advising on *matters referred to them,* but in addition to this they have the duty to advise upon such matters connected with " educational theory and practice " *as they think fit.*

The appointment of a separate Advisory Council for Wales indicates the Government's recognition of the great and vigorous advance which has been made in the Principality in the matter of education, particularly in secondary schools.

The constitution of these Councils will be subject to the Minister of Education, provided that in making appointments to the Councils there shall be included :—

(*a*) Persons who have had experience of the statutory system of public education (see Part II of the Act) ; and

(*b*) Persons who have had experience of educational institutions not forming part of the statutory system.

During the Committee Stage in the House of Lords an amendment was moved to substitute the words " men and women " for the word " persons." The Lord Chancellor, speaking against this, said—At one time it was not uncommon in Acts of Parliament to show that women are included. It was due to the fact that formerly government was a masculine institution, but that day has long since passed and not only is it not usual to do so, but certainly it is thought rather offensive to deal with the female sex as though it were thought to be an exceptional privilege.

The word " persons " is a neutral word and it would in all circumstances be interpreted as including women. The amendment was withdrawn. [See also *Sex Disqualification (Removal) Act, 1919,* in Appendix.]

There is no restriction as to what proportion of the members of the Councils shall belong respectively to each of the above categories. The Minister has a free hand in making the appointments. These Councils are to be representative, not of sectional interests (e.g. not of technical education or rural education) nor of professional organisations but of the broad aspects of the national life.

The object of the appointment of these Councils is *not to deal with administration problems or procedure,* but that they shall concern themselves with *what is taught,* and with the " *content* " *of education* generally ; with the theory of what can be taught and the practice of what is taught, i.e. with " educational theory and practice."

These Councils, among other things, may consider the questions of aiding in the education of pupils by broadcasting and the use of films in educational establishments.

The Advisory Council for Wales might also consider the question of the two types of secondary schools in Wales (about two-thirds of these were established under the *Welsh Intermediate Education Act, 1889,* and one-third by L.E.A.s under the *Education Act, 1902*) and how they may co-ordinate the work in these with modern and technical secondary schools and advise thereon as to what should be the type of curriculum of each class of school.

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.

The last words of this section after " Act " were added during the Committee Stage in the House. This addition ensures that the Report shall contain, in addition to a statement of what the Board itself has been doing, that there shall be a statement of the names of the persons who have been appointed to the Advisory Councils, any variation in the personnel of the Councils during the year, with a general report of their proceedings, which may show whether the Councils are real live partners in the central administration of education in this country. Mr. Butler also stated (21st March, 1944) that the Report under Section 5 should inform Parliament annually on the progress of reorganisation and on the number of teachers which will be available. This may enable Parliament to decide *when* it is advisable to raise the upper limit of compulsory school age to 15 or 16. [Section 35.]

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 to this Act, the local education authority for each county shall be the council of the county, and the local education authority for each county borough shall be the council of the county borough.

This Section 6 (1) definitely fixes the councils of administrative counties and the councils of county boroughs as the Local Education Authorities in the country.

There is no proviso allowing the councils of certain non-county boroughs or urban districts to be L.E.A.s as under Section 1 of the 1902 Act.

These L.E.A.s must however carry out their administrative work in accordance with the First Schedule of this Act.

Under Part I of the First Schedule of this Act the Minister may establish a " Joint Education Board " for the area of two or more councils, and such Joint Education Board will be the Local Education Authority for the areas of those councils in the place of the separate councils for the areas concerned.

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

Part II of the First Schedule deals with the formation of Education Committees ;

Part III deals with the delegation of functions of L.E.A.s to " Divisional Executives " appointed by the L.E.A.s for administrative counties under their " schemes of divisional administration."

This delegation of functions is an innovation in local government.

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 duties of a local education authority referred to in the previous section are made here more specific, so far as they relate to primary schools and secondary schools and their " equipment."

When this Section 8 was under consideration during the Committee Stage in the House, an amendment was moved to define the word " equipment " more specifically, by adding—" *such equipment to include the provision of projectors and wireless sets.*" This amendment was not agreed to, as it was thought better not to add these words, in order that *the widest interpretation* could be placed on the word. It was pointed out that if the word " wireless " were used, this might have a restrictive effect. Later on, the question might be raised—Does the word include " television " ? or Does it include some other invention or not ?

Section 114 defines a *Junior* pupil as " a child who has not attained the age of 12 years."

A *Senior* pupil is defined as " a person who has attained the age of 12 years but who has not attained the age of 19 years."

For administrative reasons it has been customary for pupils of 11-plus to be transferred from junior schools to secondary, central or senior (modern) schools. While the " compulsory school age " terminated at 14, if transfer to a central school or to a senior school were delayed until, say 13, this would only allow about one year in that school. Further, those who showed sufficient intelligence at 11-plus as to be likely to profit by education at a secondary (or grammar) school, if transferred at this age, they would be enabled to complete a five years' course by about 16.

The White Paper " *Educational Reconstruction,*" published before the Education Bill, stated : " At about the age of 11 comes the change from the ' junior ' to the ' senior ' stage." Also that paper made reference to " three main types of secondary schools to be known as grammar, modern and technical schools." It further stated that " in the future, children at about 11 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.

In 1918 I wrote an article on " *Educable Capacity* " (published in the *Times Educational Supplement*, 18th September, 1918). This was based on an inquiry as to the number of pupils for whom it would be necessary to provide " advanced instruction for the older or more intelligent children in attendance at public elementary schools." [*Education Act, 1918*, Subsection 2 (1) (*a*) (ii)]. These statistics were based on the attainments of over 600,000 children in England in attendance at elementary schools, and on more than one occasion the Chief Medical Officer of the Board of Education made references in his Annual Report to the figures I had given therein.

In this article, among other recommendations, I stated :—

" The probable direction in which an advance will be made will be *to train teachers* in methods of psychological research, and also to arrange for them *to keep records of the mental capabilities of the children under their charge*, just as a record is kept of their chief physical characteristics under the Board

of Education scheme for Medical Inspection. Possibly the " medical cards " may be supplemented by " *mental capacity cards* " and each teacher will receive instructions as to the methods of observation, and be advised to keep a rough mental record book to jot down particulars from which a definite entry on the mental record cards would be made later."

The analysis of mental measurement has demonstrated the supreme importance, during childhood, of the *general factor of intelligence* whether this be considered as a simple entity or as the average of a number of elementary capacities. Individual differences of *general* intelligence can be observed and assessed at an early age, and these differences remain *fairly* constant not only through school life but through adolescence and adult life.

In addition to this *general factor*, in a child's mental make-up, we may have other factors. What has been styled a *verbal factor* begins to be noticeable a little before the age of 11; about the age of 12 a general *arithmetical factor* begins to show itself; while what has been styled the *manual factor* is often much later in showing its influence.

A consideration of the above general conclusions caused Professor Burt in the *British Journal of Educational Psychology* (November, 1943) in an article on " The Education of the Young Adolescent," to state :—

" It may be doubtful whether the abandonment of a classification based on general intelligence as our primary basis and the choice instead of a classification according to group factors (whether verbal, arithmetical or manual) will not be reversing the practical implications of established psychological principles."

Recently the Advisory Committee of the County Councils Association (which committee includes a number of experienced educationists) stated in a report when commenting on the statement in " Educational Reconstruction " referred to above :—

" School records and intelligence tests are undoubtedly of value, but they do not provide a general basis of education, and it would therefore seem that a written test of some kind or other ought not lightly to be abandoned. . . . It will therefore be for each local education authority to make in their scheme [or development plan] such arrangements as are deemed most fitting for their area."

This variation of opinions shows that intensive Educational Research is needed for " the discovery and establishment of satisfactory *criteria* for the wise guidance of the sorting process which may be applied to all pupils somewhere in the age-period 11–13." (Clarke.)

Section 82 of this Act, below, authorises " a L.E.A., with the approval of of the Minister, to make such provision for conducting, or *assisting the conduct*, of research as appears to the authority to be desirable for the purpose of improving the educational facilities provided for their area."

In an article on " Educational Research in the New Setting," by Sir Fred Clarke (published in the February 1944 issue of the *British Journal of Educational Psychology*) he has stressed the need of organised research into our educational problems.

In commenting on what he described as Professor Burt's " weighty and timely article " (referred to above), wherein he deprecated strongly any practice that placed the main reliance upon the results of tests for the assessment of *special* abilities so far as they have been manifested at that early stage, Sir Fred Clarke states that " the *first need is for a suitable form of pupil-record and of training teachers to use it.*"

N.B.—*This shows a remarkable coincidence with the suggestion I made (over 25 years ago) in the article, referred to above, on " Educable Capacity."*

In his article Sir Fred Clarke refers to the newly created Educational Research Foundation, in association with the University of London Institute of Education, which is guided by the active support of a Research Advisory Council. He states that " Opinion is virtually unanimous that *their first task* is to go into the question of working out adequate instruments of diagnosis, including *the formulation and use of a suitable form of school record.*"

In commenting on the question of transference from primary schools to secondary schools he says : " the special place examination in its old competitive form goes. If some form of record card is to play its part in determining allocation to suitable future schooling, it is impossible to exaggerate the importance of either the form of the card, or the tests by which entries upon it are arrived at. For here we are dealing with more than just the allocation of pupils to appropriate courses. *In a very real sense we shall be taking action that will have its effect upon the whole future structure of English society.*"

If a child shows that he or she is not likely to benefit by specialising in literary studies and in other things that go to lay the formation of that type of mind that will do honour to the professions then it is important that that child should have a sound chance in developing craftmanship and ability in handwork as it is upon the skill and upon the industrial and technical aptitude that much of the future of the country will depend. Hence the necessity for secondary schools of varying types and of sound methods of selecting pupils for the type of secondary school for which their aptitude best fits them.

See also Part VI of the Board's Memorandum on the " *Principles of Government in Maintained Secondary Schools* " in Appendix B.

(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 ;

This is to make reorganisation compulsory and to ensure that there shall be a definite break between the primary school and the secondary school. There must be *separate* schools for those who have been attending a primary school up to the age of 11 (or such later age as may be fixed), whether these secondary schools are called modern schools, technical schools or grammar schools. It is intended that there must be an end to the older type of all-age elementary school dealing with pupils from 5 to 14. Blackpool, in 1920, adopted the principle which underlies the reorganisation of schools (that separate schools should be provided for all over 11). Other L.E.A.s, for various reasons, adopted a similar method later. The Board instituted an inquiry and the Consultative Committee (commonly called at that time the " Hadow " Committee) published their report in 1926, advocating this type of reorganisation being universally adopted. The *Education Act, 1936*, was passed to facilitate this reorganisation, the present Act here makes it *compulsory*.

(*b*) to the need for securing that provision is made for pupils who have not attained the age of five years by the provision of nursery

schools or, where the authority consider the provision of such schools to be inexpedient, by the provision of nursery classes in other schools ;

Formerly the L.E.A. had *power* to provide nursery schools from the age of 2 upwards, but now it is a definite *duty* to provide these wherever such are really necessary, e.g. such schools or classes might not be considered necessary in a hamlet in a rural district with only a few scattered people resident therein. The word " mainly," in Section 9 (4) below, will enable experiments to be made to provide for young pupils to remain in a nursery school beyond the age of 5.

The policy of providing nursery schools may have a very profound effect on the physical and mental health of the young child and on its capabilities for growth into the best kind of citizenship. They will be places for the formation at an early age of good habits.

See also Note on Subsection (2) (c) below.

(*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 or otherwise, special educational treatment, that is to say, education by special methods appropriate for persons suffering from that disability ; and

The requirements of the former Acts relating to blind, deaf, mentally or physically defective pupils are here considered as part of the *duties* of a L.E.A. but with a more comprehensive outlook for the education of such handicapped children. Owing to the nature of the disabilities of such pupils it is not necessary that there shall be separate institutions for junior and senior pupils. (See the proviso to this section.)

For a working definition of " special schools " see Section 9 (5) below.

" What many pupils [who suffer from mental disability] need is an environment in which they are no longer the inferior group in school and the playground—an environment in which they can take at least an equal part in lessons, play, and social activity. The special school provides these with an environment in which they are more or less equal members of a community and where they can have a fair share or even a leading share in the life of the school and its responsibilities. *Their " inferiority complex " may disappear.* Here particular children may find that relief from comparison with brighter children which is an essential factor if they are to develop their capacities to the full and to make happy all round progress." " In the special school they may gain confidence, self respect, ability to play games normally, skill in practical work, good social habits and social adjustments, so that when they leave school most of them will be fitted (with due after care) to take a useful, if humble place in the community." (Mary M. Lindsay in *Times Educational Supplement*, 17th June, 1944.)

(*d*) 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 :

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

This subsection (2) (d) deals with the provision of boarding schools by the L.E.A. and also again refers to the allowance of a *choice by parents* who consider such type of school desirable for their children.

This type of education may be specially useful as enabling children from lonely farm houses or farm helpers' homes to get some experience of community life.

See also Section 76 for further reference to wishes of parents.

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 shall have power to establish primary and secondary schools, to maintain such schools whether established by them or otherwise, and, so far as may be authorised by arrangements approved by the Minister, to assist any such school which is not maintained by them.

Section 8 (1) above makes it the duty of a L.E.A. to secure (or make sure) that there are sufficient schools (i.e. sufficient in number, character and equipment) to provide both primary and secondary education for the junior and senior pupils resident in their area. Under Section 9 the Authority :—

(i) must *maintain* such schools whether established by themselves or otherwise ; and

(ii) may *assist*, with the sanction of the Minister, any such primary or secondary schools which are in their area, but which are not maintained by the L.E.A.

This assumes that such private or independent schools form an integral part of the arrangements for providing sufficient and efficient schools for their area. [See Section 11 (2) (*d*) below.] There is however no statutory requirement that the premises of the *assisted* schools shall conform to the Board's regulations for maintained schools (*Section 10 only refers to schools maintained by the L.E.A.*).

The power of the L.E.A. to *assist* schools which are not maintained by them [see Sect. 114 (2) (b) for definition of "assist"] enables the L.E.A. to give opportunities to children, who would not otherwise have such opportunities, of going to certain schools by paying the fees of such pupils. The object of assisting these schools is to bring them within the reach of the poorer pupils. This allows for a diversity of choice in the educational system and gives an opportunity for pupils to go to the type of school which may suit them best.

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

Provided that any school which by virtue of any enactment repealed by this Act 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.

As all Local Education Authorities are (except for Joint Education Boards) either the councils of administrative counties or of county boroughs, both primary schools and secondary schools which are vested in the L.E.A. for any area are to be designated *county* schools. This applies whether the school was established by the authority (or a former authority) or whether transferred to such authority. If it was deemed to be, or treated as being provided by the authority it is a county school.

Schools which are maintained by the L.E.A. but which were not provided by the authority, nor deemed to have been so provided, are called voluntary schools.

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

This ensures that existing voluntary schools or non-provided schools shall be maintained as voluntary schools.

The words " if it was then maintained by a former authority " exclude from such compulsory maintenance non-local orphanages or charitable schools which have been conducted in the past as public elementary schools. This will prevent these schools from coming automatically on 1st April, 1945, to be maintained by the L.E.A. as voluntary schools. This immediate exclusion does not prevent the L.E.A. from either including, or leaving out, such schools from their development plan as they may think expedient. Each previously maintained school will, under Section 32, be deemed to be provisionally an " aided " school, preserving to a great extent its *status quo* until the question is decided as to whether it shall remain as an aided school, or will become a controlled school or a special agreement school. In *R.* v. *Easton*, [1913] 2 K.B. 60; 11 L.G.R. 279. it was held by the King's Bench Division, and by the Court of Appeal, that the obligation of providing new schools with desks, cupboards and other school furniture necessary for them to be conducted as public elementary schools, was an obligation of the local education authority. The only duty on the persons who provided the schools was to provide the school buildings and not the equipment.

(4) 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 shall be known as nursery schools.

(5) 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 shall be known as special schools.

These subsections give working definitions of schools which under Section 9 (2) above are exempted from the nomenclature of " county " schools and " voluntary " schools.

See Note on 8 (2) (*c*) above on " special " schools and their functions.

(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 as well as inside their areas.

In some cases it may be more convenient to establish a school over the border line of the area of the L.E.A., for there may be a more convenient site in the area of an adjoining authority.

Or it may be more convenient to establish a " special " school in another area and this subsection gives the L.E.A. power to deal with such cases.

Before deciding on establishing a new school over their border inquiries should be made as to building or town-planning regulations in the area proposed.

10. Requirements as to school premises.—(1) The Minister shall make regulations prescribing the standards to which the premises of schools maintained by local education authorities are to conform, and such regulations may prescribe different standards for such descriptions of schools as may be specified in the regulations.

(2) Subject as hereinafter provided, it shall be the duty 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 it would be unreasonable in that case to require conformity with the requirements of the regulations in any particular respect, he may direct 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.

Subsect. 7 of Sect. 9 of the Education Bill when it left the Commons stated : –

> (7) The Minister shall 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.

During the Committee Stage in the House of Lords the Earl of Selborne said that " this subsection is too narrow since it requires all maintained existing schools to conform to *rigid standards*. The remedy that is proposed is, to omit this subsection and replace it by a new section which gives the Minister the power of modifying the building requirements within certain limitations. The purpose of the new section is to allow the Minister some elasticity in the interpretation of the regulations. It is essential that regulations which are intended to be his instructions should not become his master."

If the regulations were to be too rigid, and too rigidly applied, it might be that an existing school might be entirely suitable for its purpose, but its central hall might be, say, a few feet short of the prescribed size, and ridiculous as it might appear, the greater part of the school might have to be rebuilt to obtain this increased size of hall, and the Minister for the time being and the L.E.A. would be bound by the statute to have this altered.

Under the new section the Minister has power to direct that in a case where *owing to special circumstances* it may not be expedient to insist on *every* particular alteration being carried out as the regulations might require, it is not necessary to insist on that particular item, provided that the school premises conform to the remaining requirements.

The regulations are not necessarily permanently fixed. It is within the power of the Minister to issue regulations from time to time, and to revise them in the light of any fresh knowledge, or fresh circumstances.

Here we have one of the most important sections of the Act. Other sections preceding this make it a *duty* for the L.E.A. to maintain sufficient (in number) primary and secondary schools in their area, whether county schools or voluntary schools. Many of the existing elementary school premises are very unsatisfactory. Under this subsection the Minister will make regulations as to the general amenities which must be provided for each type of school. The regulations will require the L.E.A. to secure that every school *mainta ned by them* conforms, within certain limits, to the standards these regulations set up : the size of classes are to be referred to in their regulations as one of the conditions which the Board attach to their grants, and this may affect the size of classrooms in a school. The regulations will lay down similar standards for each type of secondary school for the physical surroundings of the pupils (e.g., as regards space, light and air) with equivalent opportunities for recreation, physical and mental. The regulations will require that provision shall be made for adequate premises for the preparation and serving of meals. These last must be provided by the L.E.A. See Subsection 15 (6).

" Premises " (as defined in Section 114) " in relation to any school includes any detached playing fields, but, except where expressly provided, does not include a teacher's dwelling house." The words " where expressly provided " refer to Clause 8 of the Second Schedule, where if the " premises " are to be transferred to the L.E.A. the teachers' dwelling-house must be transferred too.

In subsection (1) of Section 10 above, the phrase " such *descriptions of schools* as may be specified in the regulations " gives the Minister power to prescribe appropriate regulations for secondary, primary, infants and nursery schools. The phrase " description of schools " does not refer to the denominational or undenominational character of the school.

In the proviso the phrase " other special circumstances *affecting the school premises*," the word " premises " ensures that it will not be any special circumstances connected with the managers or governors that will be the determining factor when the Minister will have to deal with it.

The word " *premises* " was inserted in this section in the House of Commons (when considering the Lords amendment to the Bill) to ensure that only special circumstances in connection with the " premises " could be taken into consideration. The Minister would be precluded from considering the character of the school whether it was a voluntary school

or a county school. The Minister may make different regulations, say, for primary schools and secondary schools, but neither he nor his successors could make special regulations for aided schools as compared with controlled schools or county schools, nor may he make regulations whereby owing to "*financial circumstances*" a lower standard would be accepted in any particular cases.

As under Subsection (3) (a) of Section 15 the managers or governors are only responsible for alterations to the "school buildings," it would appear that if it be necessary to enlarge the school playground of a voluntary school to enable the premises of the school to conform to the regulations, this enlargement, with any other necessary "alterations" to the playground, would be carried out at the expense of the L.E.A. [See 15 (3) later.]

See also Note on Section 9 (3) concerning furniture and equipment.

Building Regulations. See Ministry's Circular 10 of 14th November, 1944, and Draft Building Regulations and Memorandum thereon issued therewith.

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, every local education authority shall estimate the immediate and prospective needs of their area, having regard to the provisions of this Act and of any regulations made thereunder and to the functions relating to primary and secondary education thereby conferred on them, 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, showing the action which the authority propose should be taken for securing that there shall be sufficient primary and secondary schools available for their area and the successive measures by which it is proposed to accomplish that purpose.

Under Section 11 the L.E.A. must, not later than 1st April, 1946 (or within such extended period as in any particular case the Minister may allow) prepare a "*Development Plan*" for submission to the Minister showing the action the L.E.A. propose to take for securing that *there shall be sufficient primary and secondary schools in their area*, and the successive measures by which they propose to carry out the programme outlined in their plan.

The words "in any particular case" limit the discretion which the Minister may allow the L.E.A.

In preparing this plan the L.E.A. must :—

(i) Estimate their immediate needs ;

(ii) Estimate their *prospective* needs, taking into account

(*a*) changes which will be necessary when the leaving age is raised to 16 ; and

(*b*) changes which variations in the birthrate may necessitate ; and

(iii) State the priority order in which the schools, both primary and secondary, will be established.

It will be useful if an Ordnance Survey Map be submitted with the plan, showing the relative positions of the various primary and secondary schools in their area. A county council may send in a map for each of their "divisional administration" areas, indicating the county

schools and voluntary schools by different colours or marks. For the divisions of the county, a small scale map of the whole county may suffice to show the respective divisions of the county, with a quarter inch to the mile map for *each* of the areas. For some areas a one inch to the mile map may be used, while for smaller areas as in county boroughs a six inches to the mile map may be necessary, if the position of all present and prospective schools is to be clearly shown.

(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 in the area, 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, voluntary primary schools, and voluntary secondary schools 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 ;

This subsection refers to all existing schools which are available for providing primary or secondary education.

The L.E.A. must sketch out :—

(i) The nature of the education to be provided in each of their schools ;

(ii) The ages of the children to be taught therein.

As regards " primary " education the L.E.A. must specify in their development plan the provision they suggest for nursery schools and infant schools with their educational proposals generally for junior pupils.

For secondary schools they should give their views of the type of education for the modern, the technical and grammar school secondary schools.

The Minister from these particulars may envisage the development of education in England and Wales.

It has been suggested that in re-arranging the educational system in an area, it *might* be possible for the L.E.A. to suggest to the Minister the sale (or lease) of a county school to the managers of a voluntary school, *upon agreed and strictly business terms*, if this course would assist in the provision of *sufficient* primary and secondary schools in their area. There does not appear to be anything in this Act precluding such a course of procedure *if the Minister approves thereof* : e.g. if in an area there is a group of all-age voluntary schools, willing to reorganise, but in so congested a district that they cannot secure a suitable site for a modern secondary school, and there should be a county school so situated that it would be of use to the managers for that purpose, also *if at the same time* the L.E.A. could establish a county school elsewhere, such a course would no doubt be more economical for both the L.E.A. and the denomination. Before including such an arrangement in the development plans it might be advisable under Section 13 (1) (*c*) to suggest to the Minister the discontinuance of the county school *as a county school.*

(*b*) specify what alterations are, by reason of the provisions of this Act or of any regulations made thereunder, required in the premises of any school proposed to be either a county school or a voluntary school, and furnish estimates of the cost of those alterations ;

This subsection will entail a large amount of work for the L.E.A. and their officers.

A close study of the regulations made by the Minister for the provision of a high state of efficiency, space and amenities will be necessary. In the case of the voluntary schools representatives of the managers of their schools must be consulted [see Subsect. (3) below] and their suggestions considered, or they may be asked to send in their suggestions first to the L.E.A. whose officers could consider them when making their own inspection.

When a complete list of the requirements has been compiled then will come the work of obtaining estimates of the cost for each school included in the " plan."

The managers of each of the voluntary schools will have to decide whether they can provide half this cost of alterations, etc., so that their school may be an " *aided* " school, or whether they must agree to the L.E.A. carrying out the repairs and the school becoming a " *controlled* " school.

It will also be necessary for the L.E.A. to consider what is to be done in the case of a school which cannot be satisfactorily repaired without inordinate cost, whether to make application to the Minister for sanction to the closure of the school.

See Note on Subsection 13 (6) below for suggestions as to *plans* required for extensive alteration to existing buildings.

(*c*) specify what additional county schools and voluntary schools, if any, will be required for their area ;

The L.E.A. must deal in their development plan not only with repairs and alterations to existing county and voluntary schools, but bearing in mind the question of the raising of the school-leaving age to 15 or 16, must forecast what *additional* school accommodation will be requisite for their area, to meet the needs of pupils between 15 and 16, in addition to *additional* accommodation for other pupils of compulsory school age.

The following points will require careful consideration :—

(i) The effect of prospective changes in the birthrate ;
(ii) The number of pupils (additional to present numbers) which must be provided for ;
(iii) The number of " junior " and " senior " pupils respectively ;
(iv) The number of both county and voluntary schools which are irreparable and must be replaced ;
(v) Any prospective changes in the general amenities in their area (e.g., new housing sites) that may necessitate the replacement of existing schools, which may thereby become redundant in their present situation. (See Section 16 below.)

A Royal Commission has been set up, under the Chairmanship of Lord Simon, to consider the question of population, the birthrate, and allied questions which may affect the future of the country.

It may be noted that in 1943 there were *over a million less children* of school age than in 1933.

See also *Current Trend of Population in Great Britain* (H.M. Stationery Office, 2d.)

(*d*) 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;

The immediately preceding subsections refer to schools (whether county or voluntary) which are *maintained* by the L.E.A. This subsection has a reference to private schools or independent schools in their area, which must have authority from the Ministry of Education for their continuance.

These schools must be considered as part of the provision for the necessities of the area and be noted in the "plan."

The L.E.A. may also consider here the question of orphanages, or schools provided by charitable foundations, which, in the past, have provided elementary education and, although not maintained by the L.E.A., happen to be situated in 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 and of pupils who require special educational treatment;

Nursery Schools. Under this subsection the L.E.A. must consider the needs of their area for very young pupils, and decide how these needs may be met with the greatest advantage to these pre-infant school pupils. In some districts where the mothers may be working in factories, the needs may be greater than in a scattered rural district. Whether the nursery schools should provide for little ones from 2 to 5, or for schools for pupils from 2 to 7 or for schools of each kind will be a matter for each L.E.A. to consider for its area and will provide opportunities for experiment.

One important point to be considered is the case of the little ones whose parents reside in blocks of flats. Will it be necessary to arrange in such a block of flats to have a nursery school, or class, somewhere in the block itself, to avoid parents having to ascend to, or descend from, their flat to accompany their little ones to or from a nursery school away?

Special Schools. Some L.E.A.s whose areas are contiguous may combine to provide residential institutions for blind or deaf or mentally or physically defective pupils, and arrangements therefor should be provisionally agreed upon before sending in their respective "development plans" to the Minister if the authority does not supply, or propose to establish such schools for these handicapped children in their own areas.

See also Note on subsection 8 (2) (*c*) above.

(*f*) give particulars of the arrangements made and proposed to be made by the authority for the provision of boarding schools;

The necessity of providing boarding schools for ordinary pupils was brought out during the Committee stage in the House, especially by some who objected to the continuance of "Public Schools." If any special advantages of community life were available to the children of persons who could pay the fees to attend a public boarding school, similar advantages should be provided for others by the L.E.A. either by providing their own boarding schools or hostels or by paying the fees of pupils whom

they send to boarding schools not provided by them, and this subsection was inserted in the Act.

The " Fleming Report " on *The Public Schools and the General Educational System* (July, 1944), states (p. 57) :—

> In future, the local education authorities will be enabled to assume financial responsibility for boarding hostels in county and voluntary schools, and we expect that many will be anxious to expand their existing boarding accommodation in schools under their jurisdiction and to create new facilities where none now exist. *We attach the greatest importance to the expansion of boarding facilities within the general system of education.* (Par. 153.)
>
> In certain districts where the population is sparse and where communications are difficult it will be necessary to provide boarding school accommodation for all the children of secondary school age. In such districts, many parents will probably desire that their children shall attend secondary schools as close as possible to their homes, and return home for week-ends. In that event, it will be necessary to provide hostels or small boarding houses at secondary schools of all types which are attended by day pupils. (Par. 154.)

The Summary of recommendations includes (p. 104) :

> We are of opinion that local education authorities should be encouraged to make full use of the powers conferred upon them [by the *Education Act, 1944*] with regard to the provision of boarding accommodation, both for long and short periods of residence at county and voluntary schools, and in this connection we make the following recommendations :—
>
> (i) That the opportunities of a boarding education shall be made available, not only to pupils in grammar schools, but also to pupils in technical and modern schools, schools making provision for training in agriculture, and schools of a multilateral type.
>
> (ii) That where it is necessary that hostels or small boarding houses should be provided in secondary schools of any type for pupils desiring residence during the week but not on Saturdays and Sundays, such hostels shall be controlled by the teaching staff and treated as an integral part of the school provision ; and that if it is found that full boarding school education is best suited to the needs of any such pupils, provision shall be made for them to receive it.
>
> (iii) That boarding schools and boarding hostels shall, so far as possible, include pupils from a number of different areas and that local education authorities shall be encouraged to make reciprocal arrangements to this end.
>
> (iv) That the Ministry of Education shall take steps as early as is practicable to secure the use for boarding schools after the war of any suitable buildings in country districts which will no longer be required for the purposes they now serve in connection with the war.
>
> (v) That in any planning schemes that may be adopted by the central or local authorities, the reservation of land for boarding schools and boarding hostels shall not be overlooked.

The " Fleming Report " also made reference to the use which local education authorities could make of the existing independent schools (public and other schools) and recommended among other things :—

> (*a*) That local education authorities should be empowered (by agreement between the Minister of Education and the governing bodies of some of these schools) to reserve a certain number of places *at particular schools*, for pupils from their areas : . . . that the fees (where tuition fees are charged) and expenses of pupils sent by the local education authorities shall be paid to the school by the authorities, which shall recover from each parent an amount determined under an approved income scale, and shall receive a grant from the Minister of Education on their net expenditure. (p. 102.)
>
> (*b*) That in the case of pupils *sent by local education authorities*, no part of the tuition fee or cost of education shall be recovered from the parents by the authorities ; but that, when such pupils are sent as boarders, an

appropriate part of the boarding fee shall be recovered, under the income scale, from the parents, by the authorities, except in cases where a suitable education cannot otherwise be provided. (p. 100.)

(*g*) include information as to any other measures 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

It may be necessary to provide conveyances with both drivers and conductors in rural areas, or to make arrangements with managers or proprietors of bus services; or, in the case of pupils resident in an urban area, to provide "pupil's tickets" for conveyance on a conveyance (tram or bus) provided for ordinary passenger traffic in the area, if the L.E.A. do not provide special conveyances themselves. (See also Section 55 below, under which necessary transport shall be provided *free of charge*.) In some county areas the cost of transport is already comparatively heavy.

In *Shrimpton v. Hertfordshire C.C.* (1911), 75 J.P. 201, the House of Lords held that the L.E.A. was responsible for an accident to a child who was conveyed to one of the authority's schools, although the child was not one of those for whom the vehicle was provided.

(*h*) contain such other particulars 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, 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.

The subsections of Section 11 give a fairly detailed summary of particulars of requirements for implementing the duties of the L.E.A. to provide for primary and secondary education in their area, but in case there should be some particular point which experience has shown is not covered by the preceding subsections, this final subsection (*h*) makes the requirements complete, for it refers to *such other particulars* as the authority may think necessary or the Minister may require.

The proviso is to make a temporary allowance for special circumstances known to the L.E.A. If it is recognised that the reorganisation of a school will not be completeable by the specified date for some reason known to the L.E.A., this proviso enables the L.E.A. to recommend in their development plan that such specified all-age (5 to 14) school may continue (*as a temporary* measure) to be recognised as such, but *the period of temporary recognition should be specified in the development plan.*

(8) A local education authority shall, before submitting their development plan to the Minister, consult the managers or governors, or persons representing the managers or governors, 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 of 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 who, in his opinion, would be affected by the execution of the plan, give such directions as he considers expedient for securing that sufficient particulars are so furnished.

Before submitting their "development plan" to the Minister, the L.E.A. must consult the managers or governors of schools *other than county schools* or their representatives which the authority may consider would be affected by their plan.

This previous consultation will be valuable in connection with the survey of alterations or improvements which may be included in the plan as necessary.

After submitting their "development plan," the L.E.A. must supply the managers or governors with such sufficient particulars as will enable them to see how their school would be affected by the proposals contained in the plan.

These particulars should include details of the estimated cost of any repairs or alterations required to satisfy the regulations of the Minister referred to in Section 10 *above.*

Section 114 defines "*alterations*" as: "Alterations, in relation to school premises, includes any improvements or enlargements which *do not amount to the provision of a new school.*"

It may be that some private owner of a rural voluntary school may be abroad (e.g., a local squire or a lord of the manor) and he may not see the particulars submitted to the managers of the school in which he may have some proprietary interest: in such a case, the Minister might have to decide whether the interest of this person would be affected by the plan, and to give such directions as he may consider expedient in the case.

Under this subsection the L.E.A. has to consult the managers or governors of schools, and after submitting the development plan to the Minister, has to furnish to the managers or governors *sufficient* particulars as to show the manner in which the school will be affected by the execution of the plan.

If the Minister is of opinion that no particulars, or insufficient particulars, of the plan have been furnished to any person, who, in his opinion, would be affected by the execution of the plan, he is to give such directions as he considers expedient for securing that sufficien tparticulars are furnished.

There are thus under this subsection (3) three classes of persons affected.

First, there are the managers or governors who have received particulars which the Minister may consider *sufficient* ;

Secondly, there are the managers or governors of schools in the area who have received particulars which the Minister may consider to be *insufficient*, and to whom he directs that further particulars shall be furnished ;

Thirdly, there is the group consisting of those persons affected by the plan to whom the Minister requires particulars to be furnished, if not already furnished by the L.E.A.

(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 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 of the approval thereof, and otherwise for giving publicity to the plan as approved by him.

Development plans sent to the Minister will be examined and they may be modified, rearranged, shortened or altered in form in such way as the Minister may consider expedient or necessary. An appeal therefrom by the L.E.A. is secured by Subsection 12 (3) following.

The Minister (1) Must be satisfied that every person affected by the plan has received all necessary particulars ;
(2) May receive, during the following *two months*, any objections thereto (i.e., two months after each has been supplied with particulars) ;
(3) May make such modifications, if any, which he may consider necessary or expedient thereto ;
Then (4) The Minister shall approve the plan ; and
(5) He shall give directions to the L.E.A. to ensure that :—
(*a*) the managers or governors of voluntary schools affected by the plan are informed that the plan has been approved ; and
(*b*) That publicity must be given to the plan as approved.

(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 for the area made under the next following section.

The fact that the plan has been approved by the Minister does not *of itself* affect the duties of the L.E.A., who still are bound to provide educational facilities. The fact that the plan has been prepared, submitted and approved does not terminate their liabilities nor can they act upon the plan until a " local education order " has been issued : E.g., a school which the plan recommends should be discontinued, or a new school proposed to be opened, should not be discontinued or opened, as the case may be, *until the order has been issued.*

But to ensure that the L.E.A. shall give effect to the approved plan, the Minister will issue a " local education order," and, if he considers it expedient, this order will impose duties upon the L.E.A. to secure that the development plan shall be carried out.

12. Local education orders with respect to primary and secondary education.—(1) As soon as may be after approving the development plan for the area of any local education authority, the Minister shall make an order to be called the local education order for the area specifying the county schools and voluntary schools which it is the duty of the authority to maintain, 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 primary and secondary schools available for their area, and shall make provision as to which of the schools maintained or assisted by the authority for providing primary and secondary education 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.

The Minister may approve the development plan with such modifications as he thinks fit and give it statutory force by embodying it in a " local education order " for the area.

A local education order for an area shall :—

(*a*) specify the county schools and voluntary schools which the L.E.A. must maintain ;

(*b*) define, so far as the Minister considers desirable, what the L.E.A. *must do* to secure that there are sufficient primary and secondary schools in the area ;

(*c*) specify which schools maintained or assisted by the L.E.A. will be recognised as primary schools and which as secondary schools ; and

(*d*) which of them, if any, will be recognised, *temporarily*, for both purposes. The subsection says recognised "*for the time being.*" On this account the " plan " should specify the length of the temporary recognition, and the " order " ought to do likewise.

(2) The local education order for every 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 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 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 of any school which, in his opinion, would be affected by the amendment, notice 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.

The duties of the L.E.A., as specified in the order, shall continue until the order be amended, if later any amendment be found expedient, through changes (or proposed changes) in the conditions in the area.

The proviso to this subsection is to ensure that any person, or body of persons, who may be affected by an amendmen., if made, shall have due notice and have an opportunity to state any objections they may have to the amendment.

An amendment might make a material variation in the duties of the L.E.A. and of this *they* should have notice of the proposed change, or the conditions affecting some particular voluntary school in the area might affect the managers or governors of that or a neighbouring school. Similarly, the proprietor of an independent school might be affected if the amendment should provide for the establishment of a boarding or other school in his vicinity.

(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 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.

This subsection was added to the Bill during the Committee stage in the House of Commons with the object of providing that where a L.E.A. is dissatisfied with the " local education order " or by an amendment of the order which has been made by the Minister, and *expresses that dissatisfaction to the Minister*, the order, or the amendment, must be laid

before Parliament, and if either House so resolves, the order, or the amendment, shall be annulled. This annulment, however, will not affect anything already done under the order, nor prevent the making of a new order or a varied amendment.

This sub-section only applies to the grievance of a L.E.A. It does not give managers or governors or proprietors of schools any right of appeal to Parliament. In the framing and construction of a development plan, or in the negotiations with regard to an education order, they have ample opportunities of making their wishes known.

Section 12 empowers the Minister to give effect to a " plan," which he has approved under Section 11, by a " local education order."

Under Section 11, the Minister may approve a plan after making such modifications therein which he considers necessary or expedient.

Under Section 12, he can, having given effect to the plan by an order, proceed later to alter the plan by an amendment to the order. In each case whether modifying the original plan presented by the L.E.A., or amending the order, he must consider objections, if any, made by the L.E.A.

This subsection (3) empowers the L.E.A. to appeal to Parliament if " aggrieved " or dissatisfied *with the changes made* by the Minister.

13. Establishment and discontinuance of county and voluntary schools.—(1) Where a local education authority intend—

(*a*) to establish a new county school;

(*b*) to maintain as a county school any school which at the time being is not such a school; or

(*c*) to cease to maintain any county school or, save as provided by the next following section of this Act, a voluntary school;

they shall submit proposals for that purpose to the Minister.

Subsection 13 (1) deals with proposals of the L.E.A.: subsection 13 (2) may deal with proposals of other persons. Under 13 (1) the L.E.A. may submit proposals for the maintenance as *county* schools of new or transferred schools. The section also deals with the discontinuance of county schools and with the discontinuance (except as provided in Section 14) of the maintenance of voluntary schools.

The L.E.A. having in the approved development plan provided for the establishment of a new county school in some area, must submit a proposal for the actual establishment of this school *at a definite place* in the area already approved in the plan. Subsection 13 (1) (*a*) deals with such new schools.

Subsection 13 (1) (*b*) refers to the maintenance as a county school, of a school which is not such. There may be a private or independent school which for some reason wishes to come into the public system as a county school, and also there may be a voluntary school whose managers wish to transfer that school to the L.E.A. (See the Second Schedule for procedure for transfer.)

If the proprietors of a private school desire their school to become a *county* school, they should be prepared to transfer all their interests in the school to the L.E.A. The Minister *would probably* sanction any repayment to shareholders of money previously advanced for the establishment of the school: but this proposal must be submitted to the Minister. Each case will be dealt with on its merits after consultation with the L.E.A.

In addition to the provision of new county schools, or the transfer to the L.E.A. of some voluntary or some private school, the L.E.A. may wish to discontinue some county school or, except as provided in Section 14, to discontinue maintenance of some voluntary school.

All such proposals must be submitted to the Minister.

(2) Where any persons propose 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.

This subsection is extremely important. It deals with schools which the promoters wish to have recognised as *additional voluntary schools* to be maintained by the L.E.A. in addition to existing non-provided schools, which may automatically become voluntary schools under Section 9 (3) above. The schools for which proposals under this subsection may be made are :—

(i) schools which already exist but which are not recognised as voluntary schools maintained by the L.E.A., or

(ii) schools which it is proposed to establish, which, after erection, are to be maintained by the L.E.A. as voluntary schools.

As a rule, no grants are paid by the Minister towards the cost of erection of new voluntary schools.

But if the school proposed to be established for recognition as a voluntary school is either :—

(*a*) in *substitution* for one or more existing voluntary schools which it is proposed shall be discontinued ; or

(*b*) to provide accommodation for *displaced pupils*, who have been in attendance at existing schools, but who can no longer attend such on account of reorganisation schemes, or on account of change of residence through enemy action, or town planning schemes, etc. ; then

Grants may be made in aid of the erection of *substituted schools* under Section 103, or in aid of *schools for displaced pupils* under Section 104.

This Subsection 13 (2) *may* refer to the retransfer of a denominational school which had been transferred at some period to a L.E.A. Section 23 of the 1870 Act dealt with the transfer of a voluntary school to a School Board, and Section 24 dealt with retransfer. The Second Schedule of this Act deals with a transfer to the L.E.A., but does not refer to a retransfer.

The subsection also may refer to persons who are responsible for the maintenance of a school as a private or independent school, wishing to come into the public system and be maintained as a voluntary school. Subsection 13 (1) (*b*) refers to such a transfer to the L.E.A. to be a *county* school. Whether the school proposed to be maintained as a voluntary school will become *an aided* school, with appointment and dismissal of staff under the control of the managers, with control of religious instruction therein ; or whether it will become a controlled school with control of appointment and dismissal of staff in the hands of the L.E.A. (with some reservations as to reserved teachers) and with agreed syllabus religious instruction (except for two periods), will depend upon the particular circumstances of each case.

In each case the persons must submit their proposals to the Minister, but not until they have been in consultation with the L.E.A. This will ensure that the L.E.A. have some knowledge of any proposals for establishing voluntary schools.

(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, and the managers or governors of any voluntary school affected by the proposals or any ten or more local government electors 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, if the proposals are made with the concurrence of the authority and of the proprietor of the school and of any trustees in whom is vested any interest in the school premises.

Public notice must be given of any proposals made under this section. If the proposals are made by the L.E.A. under Section 13 (1), the notice must be given by the L.E.A. If proposals are made under Section 13 (2), the notice must be given by the persons (or Authority) making those proposals. If the proposals be to found a new county school or to maintain a school as a voluntary school, the parents of prospective pupils of the school have, by this subsection, power to express their views as to the type of school they wish to have established. If they are not local government electors themselves, they can urge such electors to express *their* objections, if any, to the proposals.

Any objections made must be made *within three months* of the first publication of the notice. Objections may be made by :—

(*a*) Any L.E.A. affected by the proposals ; or

(*b*) managers or governors of any voluntary school affected thereby ; or

(*c*) any ten or more local government electors *for the area.*

Section 18 of the 1921 Act specified " any ten *ratepayers* in the area for which it is proposed to provide the school." This was generally taken to mean ratepayers in the area of the L.E.A. responsible for providing the school and not necessarily in the area where the school is to be built.

The removal of the " 30 children " qualification of former Acts will enable a proposed closure of a school to be dependent more on the circumstances of the school as evinced as a result of the public notice, rather than on the number of pupils.

The proviso to this subsection exempts from compulsory public notice being given if the proposals refer to a school, in receipt of grants from the Board of Education, which it is proposed shall be maintained as a voluntary school, if these proposals are made with the concurrence of the L.E.A., and of the proprietor of the school and of any trustees in whom is vested any interest in the school premises.

(4) Any proposals submitted to the Minister under this section may be approved by him 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 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.

The Minister may make modifications in the proposals if he considers these desirable, before approving of them.

But approval of the transfer of a voluntary school to the L.E.A. must not be given unless the transfer of any necessary interests in the school premises have been made in accordance with the Second Schedule of this Act.

Under clause 6 of the Second Schedule, the managers or governors may transfer such necessary interests *even if these are not vested in them*, if the Minister has approved the agreements. (See Note on the Second Schedule.)

(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 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.

The L.E.A. must not take any steps to carry out any of the following business *until proposals therefor have been approved by the Minister* :—

(*a*) To establish a new county school ;

(*b*) To accept the transfer of a voluntary school or other school to the Authority ;

(*c*) To accept the charges for maintenance of an independent or other school, as an additional voluntary school.

(*d*) To discontinue the maintenance of a school.

This prohibition applies even if the development plan has provided for that particular business.

(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 specifications and plans of the school premises, and the Minister, on being satisfied that the school premises will conform to the prescribed standards 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.

Subsections (6), (7) and (8) were inserted during the Third Reading in the House of Lords. It was ascertained (too late for the Report stage) that Subsection (5) did not deal adequately with the problem of the *new* school. Under that subsection as it stood the Minister's consent to the establishment of a new voluntary school would be dependent upon the plans for the school being submitted to him and his approving them. When he had approved them, and only then, could the matter go forward.

It was realised that there is a prior stage at which the Minister's consent or otherwise to the proposal to establish a new school ought to be indicated ; that is on the question as to *whether a general case can be made out for the establishment of a new school.*

If the Bill had been left without this amendment, before any denomination, or other body of people, wishing to establish a new school could get the Minister's consent to go forward they would have had to go to the expense of having all the plans drawn and estimates prepared, and yet the Minister's consent *might* have been withheld on some prior consideration.

The object of this addition to the Bill was to divide the procedure into two stages, so that the consent is given or withheld on the general question of whether a new school is required in that area. *Consent having been given to this*, the procedure is laid down by which the persons proposing to establish the new school submit their plans, which have to be approved by the Minister before they can go ahead.

The first stage is referred to in Subsections (1) to (5) and Subsections (6) to (8) refer to the second stage.

The first stage is the publication of notices of the essential particulars of the proposed school, such as its location, its denominational or educational character, etc. It is at this stage of publication that objections by interested persons may be made.

The second stage arises when the Minister has approved the proposals, with or without modification, and at that stage plans and specifications of the school are submitted to the Minister by the promoters.

In the case of voluntary schools the plans will normally include particulars of the playing fields, and rooms for medical inspection and treatment and for the provision of meals and milk. In accordance with Section 53 (1), 48 (5) and 49, the playing fields and rooms provided *solely* for medical inspection and treatment and school meals should be provided by the L.E.A. These adjuncts to the school are deemed to be for undenominational purposes.

In the case of a new school the specifications and plans must show that the proposed school will conform to the standards prescribed by the regulations made under Section 10 above.

Under Section 29 of the *Education Act, 1921*, it was specifically stated that " the managers " [of a voluntary school] " shall provide the schoolhouse free of any charge."

This section is now repealed and the above subsection (6) of Section 13 to some extent replaces it.

Existing voluntary schools are dealt with under various sections of this Act, as regards maintenance, management, apportionment of costs of repairs, etc., and this subsection deals with proposals from the L.E.A., or

from prospective managers or governors who desire to establish a *new* school. The proviso states that if the persons by whom the school is to be established wish it to be maintained by the L.E.A., they must consult the L.E.A.

The former regulations of the Board of Education were :—

In the case of a new building, or of extensive alterations to an existing building, *preliminary*, or sketch plans drawn either to $\frac{1}{16}$ or to $\frac{1}{8}$ in. to the foot should be prepared, and a rough estimate based upon the cubic contents of the building should be submitted with these plans to the Board.

The Board would then submit to the proposers their observations on these preliminary plans.

When the L.E.A. or the prospective managers or governors are in a position to say exactly what the total cost of the scheme will be, either from tenders received, or upon a close estimate, the forms supplied by the Board should be filled up and sent with the full plans for final approval.

A concise description of the various rooms with their dimensions and uses should accompany the plans. A specification should also be sent with the estimate. The full plans which were required included :—

(*a*) A block plan of the site drawn in ink to a scale of 1 inch to 20 feet. This plan must show the position of the buildings, playground [playing fields], drains, boundaries, levels, etc.

(*b*) A plan of each floor of all the buildings drawn in ink to a scale of 1 inch to 8 feet.

(*c*) Sections, and at least four elevations, also drawn in ink to a scale of 1 inch to 8 feet.

If the school is to be established by the L.E.A. as a county school and it is intended to apply for a loan to meet any capital expenditure, it should be noted that the council of the county or county borough cannot delegate to its Education Committee any powers of raising of a loan. On this account *an application for a loan must be signed by the Clerk to the Council, and not by the Chief Education Officer* of the Education Committee.

It is customary in many cases for the chief education officer to prepare the necessary estimates and the various details required by the Finance Committee of the Council. These are generally passed on by him to the county borough treasurer or the county treasurer, who presents them, with his observations to the Finance Committee. If the Finance Committee by resolution recommend the council to make an application for a loan, when this resolution is accepted by the council, it becomes a resolution of the council.

It may also be noted that sanction to the raising of a loan is given by the Minister of Health (acting as successor to the former President of the Local Government Board) and not by the Minister of Education, but as a rule such sanction to the raising of a loan will not be given unless the Minister of Education has approved the plans.

Further, if the Minister of Education has approved the application for a loan the Minister of Health will not hold a public inquiry concerning such loan (as is generally necessary for public works loans), for the Minister of Education himself has power to hold inquiries concerning educational matters.

In the case of all applications for sanction to loans the Ministry of Health must be furnished with :—

(*a*) a copy of the resolution of the council directing the application for sanction to the loan required, and giving the name of the proposed school ;

(*b*) a copy (on tracing cloth or on paper mounted on linen) of the block plan approved by the Ministry of Education.

This plan must show the drainage arrangements.

(*c*) A full explanation of the difference (if any) between the amount of the loan and the amount of the estimate provisionally approved by the Ministry of Education previously.

(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 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 or any buildings required only for affording facilities for medical inspection or treatment or for providing milk, meals, or other refreshment shall be the duty of the local education authority.

When the proposals, specifications and plans for a new school have been approved by the Minister, if the school is to be established by the L.E.A. as a county school, the L.E.A. have a *duty* to carry out the proposals.

If the new school is to be maintained by the L.E.A. as a voluntary school it will be the duty of the persons by whom the proposals were submitted to carry out the proposals, except that for a voluntary school the L.E.A. will have the duty :—

(*a*) To provide playing fields ;

(*b*) to provide any building required only to give facilities for medical inspection or treatment ; and

(*c*) to provide any buildings required only to give facilities for providing milk, meals or other refreshment.

See also the Note on Subsection 9 (3) above as to furnishing a new school

(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 a duty to maintain any school after proposals that the authority shall cease to maintain it have been approved by the Minister under this section.

The approval of the Minister of proposals for maintenance or for discontinuance of maintenance, automatically creates a duty for the L.E.A. to carry out the proposals.

14. Restrictions on discontinuance of voluntary schools by managers and governors.—(1) Subject to the provisions of this section, the managers or governors of a voluntary school shall not discontinue the school except after serving on the Minister and on the local education authority by whom the school is maintained not less than two years' notice 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 of which expenditure has been incurred by the Minister or by any local education authority or former authority, 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.

A clause was inserted in the 1918 *Education Act* stating that 18 months notice must be given of the proposed closure of a voluntary school, a period which it was thought would give the L.E.A. time to provide a new school. This was inserted to prevent a private owner of, say, a rural school, suddenly closing the school.

In this (1944) Act, the period has been fixed at two years, and this notice must be given *both* to the Minister and to the Local Education Authority.

There is a proviso here in connection with voluntary schools which have received a grant from the Minister, or from a local authority, towards the cost of construction or alteration of such schools. In such a case the managers or governors of the school must obtain the consent of the Minister to such notice being given by them, which consent may be subject to the repayment of so much of the grant as the Minister considers just. If *public money* has been spent to bring the school up to date it is only equitable that they should refund to the public the unexhausted value of the improvements. The managers or governors cannot appropriate to their own use premises which have been rehabilitated at the expense of the Ministry or the L.E.A.

(2) No such notice as aforesaid shall be withdrawn except with the consent of the local education authority.

When the notice for closure of a voluntary school has been given, the managers or governors may not withdraw the notice, unless the Local Education Authority (which may have been taking steps to provide a school) consent to the withdrawal of the notice.

(3) If, while any such notice as aforesaid is 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 the school until the expiration of the notice, the authority may conduct the school during the whole or any part of the unexpired period of the notice as if it were a county school, and shall be entitled to the use of the school premises, free of charge, for that purpose.

This subsection provides a way out of the difficulty which might arise if the managers or governors of the voluntary school concerned are unable, or unwilling, to carry on the school as a voluntary school until the termination of the two years' notice.

The L.E.A. may themselves conduct the school as a county school.

(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, 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 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 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.

This subsection deals with the respective powers of the managers or governors of the school and the L.E.A. during the remainder of the two years' notice, when the school is being conducted as a county school.

The managers or governors may have the use of the school premises, or any part of these premises, when they are not required for the purposes of the school, but shall have no power to prevent the L.E.A. from executing repairs, or carrying out alterations thereto, which may be *necessary for the use and occupation of the school as a county school.*

The L.E.A. will have the use of the school premises for their purposes, and *any interest relating to such use* is vested in the L.E.A. for the period unexpired of the two years' notice, and not in the managers or governors.

(5) Where any school is discontinued in accordance with the provisions of this section, the duty of the local education authority to maintain the school as a voluntary school shall be extinguished.

When the two years' notice has expired, or from such earlier date as the L.E.A. take over the work of conducting the school as a county school, the school will cease to be maintained as a voluntary school.

15. Classification of voluntary schools as controlled schools, aided schools, or special agreement schools.—(1) Voluntary schools shall be of three categories, that is to say, controlled schools, aided schools, and special agreement schools, and in schools of those several categories the management of the school, the secular instruction and religious education, and the appointment and dismissal of teachers, shall be regulated in accordance with the provisions hereinafter contained relating to those matters in controlled schools, aided schools and special agreement schools, respectively.

There are three types of voluntary schools:—

(*a*) *Special agreement schools* established under an agreement made with the L.E.A. in accordance with the provisions of the Education Act, 1936, or under such provisions as are included in the Third Schedule to this Act.

(*b*) *Aided schools* where the managers or governors have agreed to provide 50 per cent. of the cost of improvements or alterations

to the school buildings necessary to bring the school into conformity with the standards prescribed by Regulations made under Section 10 of this Act.

(*c*) *Controlled schools* where the cost of the necessary improvements have been made at the public expense owing to the managers or governors being unable or unwilling to contribute 50 per cent., and the L.E.A. have the *control* of the school.

The L.E.A. may take full responsibility for the *controlled schools* because it is accompanied by public control of management and of the appointment of teachers. The difficulties of religious instruction, through it being a voluntary school controlled by the L.E.A., are eased by having the " agreed syllabus " type of religious instruction therein (except for denominational instruction being allowed for two periods per week).

Aided schools will be those in which managers or governors wish to appoint their own teachers and to be unfettered in respect of denominational religious instruction ; and in order to obtain these privileges they must pay 50 per cent. of the cost of rehabilitation of their school, and of keeping it in repair, externally.

(2) Upon application being duly made to him with respect to any voluntary school, the Minister may by order direct 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 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 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, a special agreement school :

Provided that, subject to the provisions of this section, any application for an order 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 a voluntary school by virtue of subsection (3) of section nine of this Act not later than six months after the date on which the managers or governors of the school received notice of the approval of the development plan for the area, and in any other case not later than the submission to the Minister of the proposals that the school should be maintained by the local education authority as a voluntary school ; and, subject to the transitional provisions of this Act 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.

Managers may take their choice of these alternatives and will be given particulars of the estimated cost involved in bringing their schools up to the required standards.

The fact that the Minister has approved the development plan for the

area does not of itself automatically give the correct title to each of the schools recommended in the plan to come into the respective categories of voluntary schools.

The managers or governors must make application to the Minister for an order relating thereto.

Application must be made *within six months* after the date on which the managers received notice of the Minister's approval of the development plan if they do not wish their school automatically to become a controlled school.

If the school is not one included in the development plan, the application must be sent in not later than the date on which proposals are sent in to the Minister for its recognition as a voluntary school.

If the managers or governors wish their school to be an "*aided*" school or a "*special agreement*" school they must satisfy the Minister that they are able and willing to defray all expenses not included in the grant from the Ministry or from the L.E.A. (See Section 105 for loans to assist managers or governors to defray *their share* of the initial expenses.)

If no order is in force that the school shall be an *aided* school or a *local agreement* school, then the school shall be a *controlled* school.

(3) The managers or governors of a controlled school shall not be responsible for any of the expenses of maintaining 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 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 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:

(*b*) the managers and governors of the school shall not be 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 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.

Subsection 15 (3) is a very important one, setting out the relative duties of the managers or governors of voluntary primary and secondary schools, and the Local Education Authority for the area in which the schools are situated.

A. The following expenses are payable by the managers or governors of the school :—

(i) Discharging the liabilities incurred by them or on their behalf or by or on behalf of any former managers or governors for the purpose of establishing or carrying on the school ;

(ii) Any expenses incurred in effecting such *alterations to the school buildings* as may be required by the L.E.A. for the purpose of securing that the *school premises* should conform to the prescribed standards. (See Section 10) ; and

(iii) Any expenses incurred in effecting *repairs to the school premises* not being repairs which are excluded from their responsibility by the next paragraph of the subsection.

B. The managers or governors of the school are not responsible :—

(i) for *repairs* to the school playground or playing fields ; or

(ii) for *repairs* to the interior of *any building forming part of the school premises* ; or

(iii) for *repairs* necessary in consequence of the use of the premises, with the authorisation of the L.E.A., for purposes other than those of the school.

To the House of Lords in December, 1940, *a claim for damages due to the collapse of a first floor in a voluntary school* in Liverpool, during an evening concert or entertainment, came from the Court of Appeal. It was agreed by the House that the managers (and not the L.E.A.) were the responsible parties, as under Section 29 of the *Education Act, 1921*, it was the duty of the managers to provide the school-house. It was held that there were no grounds for claiming that the invitations to the display were issued for some extraneous purpose not connected with the management of the school, and if the claimants had issued their writ more promptly they would have had an effective case against the managers. But the managers were a public authority and could avail themselves of the *Public Authorities Protection Act, 1893.* As the writ was not issued until 22 months after the accident, the House of Lords dismissed the case.

By the *Public Authorities Protection Act, 1893*, it is provided that any action, prosecution or other proceedings against persons acting in the execution of statutory or other public duties must be commenced within six months after the date of the act or default of which complaint is made.

See, however, *The Public Authorities Protection Act, 1893* in Appendix A.

As Section 29 of the 1921 Education Act is now repealed it might be argued that the duty of *providing* the school is not definitely stated in the 1944 Act, but this duty of the managers may be implied from various sections of the Act. There is nothing in the Act to suggest that a school may be maintained by the L.E.A. *as a voluntary school*, unless the managers provide the school, in fact the whole of the sections dealing with voluntary schools are based on that assumption.

In a future case a L.E.A. might be included as liable, if an accident were proved to be due to their *not having secured* that the managers had carried out necessary alterations to make the buildings safe for persons using them.

In dealing with the relative liabilities of a L.E.A. and the managers or governors of a voluntary school *the exact terms used in this subsection* of the Act must be considered.

In *The Council of the County Palatine of Lancaster v. Crowe* [Law Journal LXVI, p. 408.] the question to be decided was whether the auditor had rightly disallowed some payments of the council towards making certain

improvements to the playground of certain voluntary schools or whether the council as L.E.A. had power under the *Education Act, 1921,* to make these improvements to the playgrounds of a voluntary school. This question turned on the interpretation of the terms "schoolhouse" and "buildings."

[The managers under Sect. 29 (2) (d) were "to keep the *schoolhouse* in good repair and make such alterations and improvements in the *buildings*" as the L.E.A. might reasonably require.]

Although the term "schoolhouse" by the definition in Sect. 170 of the 1921 Act included the playground (if any), as well as the offices and all premises belonging to or required for a school, it was decided that the use of the term "buildings" in close juxtaposition to the term "schoolhouse" in Sect. 29 of the Act, must have been intended to mean that the word "buildings" had not the same connotation as the word "schoolhouse." The managers were bound to make necessary alterations or improvements in the "buildings" but not necessarily to that part of the "schoolhouse" which were not buildings. Consequently as the L.E.A. had a duty to keep the school "efficient," and if the L.E.A. were of opinion that improvements to the playground were necessary to secure efficiency, the L.E.A. could not insist on the managers carrying out such improvements, but had power themselves to make such *improvements.* [See Ikin and Sparke, *Compendium of Precedents,* pp. 286-293.]

Here in Subsection (3) of Section 15 we have the following terms used:

(*a*) "school premises";
(*b*) "any building forming part of the school premises";
(*c*) "school buildings"; also
(*d*) "alterations"; and
(*e*) "repairs."

An examination of the meaning implied by each of these is necessary, if the relative duties of the L.E.A. and the managers or governors of the voluntary school are to be understood.

The word "premises" is generally taken to mean a house or buildings *with* its grounds or other appurtenances. (*Oxford Dictionary.*)

The definition of "premises" given in Section 114 of this Act assumes that the term with regard to any school includes not only the playgrounds, which are appurtenances to the school buildings, but there it is definitely stated that for the purposes of this Act "premises" include *detached* playing fields (which might not otherwise have been considered as appurtenances or appendages to the school buildings).

We may therefore take the term "school premises" as *including* both "school buildings," and other buildings which are required for the purposes of the school, as well as the playgrounds and playing fields.

There is no definition given of "school buildings," except the negative one in Subsection 6 of Section 15, which states that for the purposes of this section *it does not include* buildings *required only* for affording facilities for medical inspection and treatment and for supplying milk, meals or other refreshments.

To these specified parts of the school premises Subsection (7) of Section 13 adds the playing fields as parts of the premises to be supplied by the L.E.A. (for a new school).

During the Committee Stage in the House of Commons, the Parliamentary Secretary to the Board of Education (Mr. Ede) stated that he had been advised that "the words school buildings include the school-keeper's (or caretaker's) house if this be part of the school, or situated *within* the playground, but that a pavilion on the playing fields is not part of the school buildings but is part of the playing fields."

If we consider the term "alterations"—this is defined in Section 114

of the Act as including any improvements or enlargements which do not amount to the provision of a new school. [The Minister will decide whether the extent of the alterations do amount to the provision of a *new* school or not.]

There is no definition given in the Act of the meaning of the word " repairs " which is used in this subsection.

During the Committee Stage in the House of Commons the Parliamentary Secretary (Mr. Ede) gave as an illustration of the meaning of the word " repairs " in connection with the heating of a school :—

" The repair of a grate is clearly a repair, but the replacing of open fires by a central heating system is not a repair."

By analogy with this it may be taken that supplying and fixing a sliding or folding partition in a voluntary school would be an " alteration " to the school to be carried out by the managers or governors, but that subsequent repairs thereto would be a duty of the L.E.A.

From the above it would appear that the statement that the managers are responsible for " any expenses in effecting alterations to the *school buildings* " does not make the managers responsible for " alterations " to other parts of the *school premises* which are not school-buildings.

During the Committee Stage in the House of Lords, the Earl of Selborne (speaking on behalf of the Government) stated, " *alterations* to school playgrounds and playing fields are not placed on the managers or governors but the cost must fall on the L.E.A."

From this it would appear that if an enlargement of a voluntary school playground is necessary this will be an alteration to the playground which the L.E.A. must carry out.

Subsection 3 (*b*) of Section 15 states that the managers or governors shall not be responsible for repairs to the " *interior of any buildings forming part of the school premises* " : so that when the initial expenses of " *alterations* " *to the* " *school buildings* " have been met by the managers or governors they will only be liable for *exterior* repairs to the *school premises*.

The term " school *premises* " is used both in connection with exterior *repairs* for which the managers or governors will be liable, and also in connection with interior *repairs* for which the L.E.A. will be liable : but the term " school *buildings* " is used only in connection with *alterations* for which the managers or governors are responsible.

From this, as lavatories or offices are part of the school premises, the managers or governors of the school will be liable for exterior repairs thereto and the L.E.A. for interior repairs.

These are held to be school buildings (i.e., buildings required for the use of the school) and are not excluded from the responsibility of the managers or governors as buildings required for medical work or for feeding, and any necessary enlargements of the offices should be undertaken at the expense of the managers or governors.

(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 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.

If, after an order has been made that some particular school shall be an aided school or a special agreement school, the managers, or governors, of this school find that they are unable or are unwilling to pay their share of the cost of bringing that school up to the standards fixed by the Minister, together with their responsibilities for previously incurred liabilities, they should make application to the Minister that the order may be revoked. When the order is revoked the school may become a controlled school

(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 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.

The *Education Act, 1936*, to facilitate the reorganisation of schools, authorised agreements being made (between the managers for *new senior schools* and the L.E.A.) under which the L.E.A. were empowered to make a grant not below 50 per cent. nor above 75 per cent. of the cost of providing such new senior schools.

In these special agreement schools, under Section 10 of the 1936 Act, *the Authority have the exclusive power of appointing teachers* to serve in the schools. In the agreement it may be specified that a certain number of "*reserved teachers*" shall be appointed, who are considered fit and competent to give religious instruction in the school. (In some R.C. schools the agreement which was made allowed for 100 per cent. of reserved teachers.)

The agreement remains operative until the grant has been repaid to the L.E.A. by the managers. [For particulars of such agreements, see Ikin and Sparke, *The Education Act, 1936*, pp. 41–46.]

Some managers or governors may wish to substitute the conditions of the 1944 Act for those under the 1936 Act. In this case the managers who entered into the agreement may terminate the agreement by repaying the money granted to them to the L.E.A. and apply for an order to have their school recognised as an *aided* school under the 1944 Act.

The steps to be taken are :—

(i) The managers or governors must repay the grant to the L.E.A., and notify the Minister that that has been done ;

(ii) The Minister will then revoke the order which recognised the school as a "special agreement" school ;

(iii) The managers (or governors) must satisfy the Minister that they are able and willing to defray the expenses connected with reconditioning their school, if they receive a grant from the Ministry of 50 per cent. of those expenses ;

(iv) The Minister will then issue an order directing that the school shall be an aided school, and the power of appointing teachers shall revert to the managers.

(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 or for affording facilities for providing milk, meals or other refreshment for pupils in attendance at the school.

This subsection was inserted during the Committee stage of the House of Lords to remove any possible inconsistency between Section 15 and the conditions which were already considered to be implicit in Sections 48 (5) and 49 of the Act.

These purposes are deemed to be undenominational and should be borne by the L.E.A. as part of their duty to provide for the children in their area.

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 or any voluntary school should be transferred to a new site either because it is not reasonably practicable to make to the existing premises of the school the alterations necessary for securing that they should 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 relating to housing or to town and country planning, the Minister may by order authorise 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 or the establishment of a new school.

Section 16 deals with two groups of schools :—

(i) Those which are transferred from one site to another because the site is inadequate ; and

(ii) those schools which are substituted for others where one or two schools have found that the population had moved away so far that it was necessary to establish a new school and deal with the children in the new school.

The first group includes some old schools, some adjoining a churchyard, with very often no possibility of the site being extended and where lighting problems are difficult.

In the second group it is not proposed to restrict attendance to those pupils alone whose schools have been replaced by a new school. The new school *may* be larger than the old one. The new school *may* be held to be in substitution for an old school (or premises) in respect to a certain number of the latter's pupils, and grant will not necessarily be paid towards the *whole* of the accommodation provided in the new school, but only for *such part* of the accommodation *as is required to provide for the displaced children.* See also Section 104.

An application may be made to the Minister for sanction to the transfer of an existing county or voluntary school to a new site, if :—

(i) It is not reasonably practicable to make the existing premises conform to the Minister's " Regulations " standard, Section 10 ; or

(ii) If there has been a movement of population, rendering the existing school to some extent redundant in its present position ; or

(iii) If there is a *prospective* movement of population, owing to action taken, or proposed to be taken, in connection with housing, or town or country planning schemes.

If the Minister consents to the transfer of such school to a new site he will issue an order authorising the transfer.

This sanctioned transfer will not constitute a discontinuance of the school, such as would necessitate a two years' notice of intention to discontinue, nor would it constitute the establishment of a new school, entailing three months' public notice, with possibilities of appeal against it.

Since the transfer of a voluntary school to new premises is expressly stated *not* to constitute the provision of a new school, the expense of the transfer must be treated as expenses of *alterations to the existing school.*

In the case of an aided or special agreement school the responsibility for alterations to the *buildings* would fall on the managers or governors by virtue of the provisions of Subsection 15 (3) (*a*). The responsibility for alterations to the *site* (including the playground) would rest on the L.E.A. under the provisions of Subsection 114 (2) (*a*). [*The duty of the managers or governors to provide the site on which the school is to be built is not specified in Subsection 15 (3) (a).*]

In the case of a controlled school which is transferred to new premises the L.E.A. would be responsible for the cost *both of alterations to the site and of alterations to the buildings.*

See Section 103 (3) below.

On 21st June, 1944, in the House of Lords, Earl Selborne stated :— " If a school is transferred to a new site, or a substituted school built, before the Government pay to the managers or governors the monies due under this Act, they would deduct or take into account any sums that the managers or governors realised by selling the old premises. The value of the premises given up would be part of the transaction and be taken into account."

From the above it would appear that if the old premises of an aided or special agreement school were sold, the value of the *buildings* would be taken into account towards the managers or governors share of the expenses for alterations to *buildings*, and the value of the site, exclusive of the buildings, equitably it might be considered, should accrue to the L.E.A. towards their expenses in connection with alterations to the *site.*

If the old premises were not sold but used for other denominational purposes, the premises should be valued and the value apportioned in the same way.

In the case of a transferred controlled school it is only equitable that the valuation, or the proceeds of the sale of the old premises, should accrue to the L.E.A. towards their expenses in connection with both buildings and site.

In a case where the L.E.A. provides a site for a transferred or substituted voluntary school, to prevent any question arising in the future as to whom the site belongs to, the L.E.A. should endeavour to get a clause in the conveyance that on the premises ceasing to be used as a voluntary primary or secondary school, the site shall revert to the donors (cf. *The School Sites Act, 1841*).

See Note on Section 53 relating to *Ownership of sites.*

In dealing with the transfer of voluntary schools under this subsection harmonious co-operation will be necessary between the managers or governors of a voluntary school and the L.E.A. to prevent a dispute developing which will have to be referred to the Minister under Section 67.

In the first place the question may arise :—

1. Shall the existing voluntary school be discontinued and a *county* school erected in its place ?

This will depend to some extent on the financial position of the managers or governors.

If the voluntary school managers or governors are able to provide 50 per cent. of the cost of reconditioning and repairs then—

The next question which may arise will be :—

2. Are there any special circumstances which may cause the Minister to be satisfied that it is expedient that the existing school should be transferred to a new site ?

If the Minister by order should authorise the transfer of the school to a new site : Who shall pay for the transfer will have to be considered.

The relative obligations of the voluntary school managers or governors and the L.E.A. are given in Section 15 (3), as illustrated by Section 114 (2) (*a*). Grants from the Ministry in connection with these liabilities are referred to in Section 103.

The transferred school, as mentioned, will not be considered to be a new school, but the old school in a new place so the cost should be borne as alterations to the old school.

The managers or governors must provide for the alterations to the school *buildings* and the L.E.A. must provide for alterations to the playground, etc. The erection of the *fresh* school buildings must be undertaken by the managers or governors and must be in accord with the regulations issued under Section 10. These may have reference to central heating, improved lighting, good ventilation, also cloak room accommodation with satisfactory arrangements for drying wet clothes (specially necessary in country districts where children may arrive after exposure to rain), and lockers for outdoor shoes. In secondary schools for senior pupils reference may be made in addition to the need for practical workrooms for craft work, for domestic science, including both cookery and laundry work, and possibly for light upholstery work ; rooms for practical science work, with libraries and reading rooms, etc.

The L.E.A. will be responsible, in accordance with Sections 13 (7), 15 (6), 48 (5) and 49, for providing any buildings which may be required *only* for affording facilities for medical inspection or treatment or for providing milk, meals or other refreshment.

As the managers or governors are only responsible for alterations to school *buildings*, the L.E.A. are responsible for improvements or enlargements of the playground of existing voluntary schools, so in the case where the old school is transferred to a new position the L.E.A. are responsible for the provision of the playgrounds which may be necessary, the area of which will vary with the size of the school.

Although the word " site " has been used for over a century in the School Sites Acts, to include the ground on which the school actually stands *as well as* the adjoining playground, it might be suggested that the obligations of the L.E.A. to provide a playground may not extend to an obligation to provide the land on which the school *buildings* are erected.

The *Oxford English Dictionary* defines "*site*" as "the place or position occupied by some specified thing," or as "the ground or area on which a building, town, etc., has been built."

If this literal interpretation of the meaning of the word be taken, the managers or governors might be considered as liable to contribute to the cost of the "site" (as ordinarily understood) by measuring up the area actually occupied by the school building (excluding those special buildings required *only* for medical or refreshment purposes), and dividing the cost of the whole area in proportion to the area of the actual site on which the building stands and the area which the L.E.A. provide for the playground and the rooms *they* must provide.

The cost to the managers or governors of the area for which they are liable could then be dealt with under Section 103 (2).

Again, it might be suggested that the L.E.A. are only liable for *enlargement* of the playground, i.e., for the area by which the new playground exceeds the playground of the old school. This would necessitate a further adjustment of costs, the managers or governors being liable not only for the area on which *their* part of the school buildings are erected but also for an area equal to that of the old playground. This, again, would be compensated for under Section 103 (2) and (3).

Another point which might be considered would be for a division of the amount received for the old site between the managers or governors of the school and the L.E.A. to be made proportionate to the respective areas for which each is liable; the share of the managers or governors being taken into account to reduce the actual cost of erection, etc., on which grant will be paid, and the share of the L.E.A. being used towards the cost to them of their liabilities for enlarging or improving the playground.

The above are some of the points which could be harmoniously dealt with by all parties concerned and a dispute avoided and would meet the objection of persons who might object to the L.E.A. being compelled to provide a site for a voluntary school.

(2) Where in connection with any proposals submitted to the Minister under subsection (2) of section thirteen of this Act it is claimed that any school or schools thereby proposed to be established should be maintained by the local education authority 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 proposed 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 shall not apply with respect to the discontinuance of the school or schools to be discontinued.

Section 13 (2) of this Act authorises persons (or their representatives) who are responsible for the maintenance of a school to make application

to the Minister for their school to be maintained by the L.E.A. as a voluntary school.

Before making application for a school, not at present maintained by the L.E.A., to be maintained by the Authority, they must consult with the Authority.

The persons who make the application may *include with their application* a claim that their school, when maintained by the L.E.A., may take the place of one or more existing voluntary schools which might be discontinued under the proposed arrangements.

If a proposal under Section 13 (2) is made, accompanied by such claim, the Minister must satisfy himself :—

(*a*) That the L.E.A., within whose area the school is situated, will maintain the school referred to in the proposal ; and

(*b*) That the managers or governors of the school or schools to be discontinued, are in agreement with the suggested discontinuance.

The Minister may then make an order, with or without modifications, that the school shall be maintained by the L.E.A. as a voluntary school, and may state that it shall be in substitution for the discontinued voluntary school or schools.

If such an order be made by the Minister it will not be necessary to give the statutory two years' notice of intention to discontinue the school or schools referred to.

(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 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.

Before acting, the Minister must consult not only the L.E.A. which it is proposed shall maintain the school, but any other L.E.A. which, in his opinion, might be affected by such order.

Also he must consult the managers or governors of any other voluntary school which, in his opinion, will be affected by such order.

This consultation will be especially necessary in case there should be other schools in an adjoining area which might be affected by the recognition of the suggested school as a voluntary school on their borders.

Before making the order the Minister must consider the result of his consultations and may impose conditions which will do justice to all parties.

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 and for every voluntary school there shall be an instrument providing for the constitution of the body of managers or governors of the school in accordance with the provisions of this Act, and the instrument providing for the constitution of the body of managers of a primary school is in this Act referred to

as an instrument of management, and the instrument providing for the constitution of the body of governors of a secondary school is in this Act referred to as an instrument of government.

(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 of the local education authority and in the case of a voluntary school by an order of the Minister.

The chief objects of this section are :—

(i) to preserve the proper life of the school ; and

(ii) to preserve the proper relative position of those who have the responsibility for education in their own area.

(i) A number of secondary schools, of the grammar school type, have a long history behind them of having been under the control of a body of " governors " for each school. There should be as little break as possible with ancient traditions ; hence they are to be continued under a body of " governors," constituted under an " instrument of *government.*" Other secondary schools of the " technical " and " modern " type will be developed, and these, to be on a parity with the older type, will similarly have a body of " governors."

To have as little break with the past as possible, " managers " who have had charge in the past of schools for elementary pupils may continue to be named as such and the primary schools will be governed by an " instrument of *management.*" There is no difference in status between " managers " and " governors," but the older names are being continued where possible.

(ii) To preserve the proper position of those responsible for the schools (the relative functions of the L.E.A. and the Minister) are to be carefully set out. (See Appendix B.)

The L.E.A., who provide the county schools, will, by their order, make the " instrument of management " for county primary schools, and the " instrument of government " for county schools of the secondary type : this function is delegated to them by this section.

Section 17 deals with instruments of management and *rules* of management for primary schools : also with instruments of government and *articles* of government of secondary schools generally.

Section 18 deals more specifically with the *number* of managers of primary schools and the proportion of L.E.A. representatives to other managers.

Section 19 deals similarly with the *number* of governors of secondary schools and the proportion of L.E.A. representatives to other governors.

See the Pamphlet on *Government of Secondary Schools* issued by the Ministry of Education as to the functions to be exercised in relation to a secondary school by the L.E.A., the governors and the head teacher respectively. (Appendix B.)

(3) Subject to the provisions of this Act and of any trust deed relating to the school :—

(*a*) every county primary school and every voluntary primary school shall be conducted in accordance with rules of management 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 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.

The instrument of management, or of government, having been made as described in subsection (2) above, the conduct of the schools under the managers or governors is here dealt with.

The work of the primary schools, both county and voluntary, will be conducted under "Rules of management" *made by order of the L.E.A.* In many cases these rules may take the form of a handbook issued by the L.E.A., giving directions for the general conduct of the primary schools which they maintain, with the official "order" of the L.E.A. as a prefix thereto.

The work of the secondary schools, of the older endowed school type, having been to a great extent controlled by "governors," their independence is to be preserved as far as possible, and "Articles of Government" will be issued determining the functions to be exercised in relation to the school by the L.E.A., the body of governors, and the head teacher respectively. For the county secondary schools the "articles of government" will be made by the L.E.A., but before issue *the approval of the Minister thereto must be obtained.* For the voluntary secondary schools the articles of government will be made by an order of the Minister, and not by the L.E.A., which is one of the three parties to the conduct of the school, whose relative functions are to be defined in the articles. The Minister, in the case of an existing school, must have regard to the manner in which the school has been conducted heretofore.

Following the precedent of the older grammar schools, each with its own body of governors, the Board of Education *Regulations for Secondary Schools* for the year 1903-4 stated in Paragraph 4 (*a*):—

"Every school must be *under the superintendence of a body of governors* (or managers) responsible to the Board, to whom the grant will, as a rule, be paid. It must not be conducted for private profit or farmed out to the teacher."

Later the Regulations stated that *each secondary school must be conducted by a governing body* acting in accordance with a scheme or minute or body of written regulations approved by the Board of Education.

This article did not appear in the Secondary School Regulations for 1926 and such a school could be governed or managed directly by the Education Committee of the L.E.A. or by a sub-committee thereof if desired.

Now the 1926 arrangement is to be terminated and all maintained secondary schools are to have an instrument of government and a separate body of governors (with possibly a few exceptions where schools are grouped under the next section).

(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 in the provisions of the trust deed as appear to him to be just and expedient for that purpose.

This subsection gives the Minister authority, analogous to the powers transferred from the Charity Commissioners to the Board of Education, to modify any trust deed, the provisions of which are found to be inconsistent with either the constitution of the body of managers or governors as contained in the instrument of management or government, or with the details for the conduct of the school as contained in the rules of management for primary schools, or the articles of government for secondary schools. The Minister has power to alter the provisions of a trust deed as appears to him to be just and expedient. (See note at end of the next section [18 (1)] as to the number of alterations necessary in 1902).

During the Committee Stage in the House of Lords (21st June, 1944) an amendment was moved to omit the words "just and" from the phrase "*just and* expedient" in the last line of Subsect. 4. Against this the Lord Chancellor stated: "By the phrase 'just and expedient' we are authorising the Minister to make a modification. One would have thought that it was quite right to authorise him to make such modifications as appear to him to be just and expedient. That he would make an alteration that was *unjust* merely because he thought it was expedient, because of improper influence or other corrupt motive no one would believe. If there were such a person he ought certainly to be prevented from doing that by being told he must be 'just.' On the other hand, it is not always the case that what is 'just' is 'expedient' at that particular moment. We have to use common sense about it, and I think that the phrase is one which we should keep in the Bill. I agree the question is *whether it is expedient in the interests of the school* but that really is a different case. Therefore I myself in this case stand for justice." [The amendment was then withdrawn.]

(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.

Opportunities are here provided for representations to be made to the Minister by the L.E.A. or by other persons concerned with the management or government of the school before the Minister issues the order.

The object of the final words of this subsection is to preserve the local characteristics of the schools and their traditions:—

During the discussions on the Bill an amendment was moved that such orders should be laid before Parliament before being made by the Minister,

but it was objected to by the Minister, that judging by the experience of delays formerly under Sect. 32 (7) of the 1921 Act, this did not appear advisable, if the educational machine were to work expeditiously.

18. Managers of primary schools.—(1) The instrument of management for every county primary school serving an area in which there is a minor authority shall 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 shall be appointed by the minor authority.

(2) The instrument of management for every county primary school serving an area in which there is no minor authority shall provide for the constitution of a body of managers constituted in such manner as the local education authority may determine.

In Section 114 there is a definition of a minor authority which has under this section a statutory right to appoint one-third of the managers of a county primary school which serves their area. This definition is similar to the definition of "minor local authority" included in Section 24 (2) of the 1902 Act. Each definition includes the council of a non-county borough or urban district or rural parish, consequently authorities which were formerly L.E.A.s (Part III) for their area, but whose functions as such are now discontinued, will under this subsection have a statutory right to appoint a proportion of the managers for county *primary* schools in their area. (See Note on Subsection 18 (3) below.)

See Section 117 for definition of "minor authority" for the County of London.

(3) The instrument of management for every voluntary primary school 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:

Provided that—

(*a*) if the school is an aided school or a special agreement school two-thirds of the managers shall be foundation managers, and, if the school is a controlled school, one-third of the managers shall be foundation managers;

(*b*) where the school serves an area in which there is a minor authority, 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, all the managers who are not foundation managers shall be appointed by the local education authority.

When the *Education Act, 1902*, transferred the charges for the maintenance of the voluntary schools from the former managers to the Local Education Authority, this was accompanied by a certain amount of public control of those schools by the rule that one-third of the body of managers should be representative of the electors, and only two-thirds of them should represent the foundation which founded the schools.

The number of managers was fixed then at six, of whom four were to be appointed by the foundation and where there was a " minor authority " that body should appoint one, and the L.E.A. would appoint the other. Where there was no minor authority the L.E.A. would appoint both of the non-foundation managers.

Difficulties occurred in that many of the school buildings where trust property and the existing trustees might be more (or less) than four. Section 11 of that Act gave the Board power to make Orders for the purpose of meeting such cases.

> In the Report of the Board of Education for 1902-3 it was stated that applications for Orders had been made in the case of 10,697 out of 13,796 voluntary schools in England and Wales (exclusive of London).

Section 18 of this Act does not restrict the number of managers of voluntary primary schools to six, but allows greater flexibility in fixing the numbers to be appointed, subject to the approval of the Ministry, provided that the number is a multiple of three but is not less than six. The *proportion* of foundation managers is retained at two-thirds of the body of managers in the case of an aided school, or of a special agreement school. In the case of a controlled school where the managers have no expenses to meet, the foundation may appoint only one-third of the number of managers, but at the same time they retain to some extent the historical continuity of the foundation's connection with the school.

Of the two non-foundation managers in a school with a body of six managers, if the school is an aided school or a special agreement school, where there is a minor authority (see Section 114 for definition) the minor authority would appoint one, and the L.E.A. would appoint one : If no " minor authority " there, the L.E.A. appoint both non-foundation managers.

In a controlled school with six managers, two would be appointed by the foundation, *two* by the minor authority (if any), and two by the L.E.A. If there is no minor authority the L.E.A. would appoint all four non-foundation managers. (The minor authority appoint not less than one-third of the non-foundation managers, and not more than half of these. As one is less than one-third of the four, and two is not more than half of the four non-foundation managers, the minor authority appoints two of the four.)

If the total number of the body of managers should be nine, for an aided school or a special agreement school, the foundation would appoint six. Of the three non-foundation managers, the L.E.A. would appoint all three : unless the school is in the area of a minor authority when instead of the L.E.A. appointing all three, the minor authority would appoint one and the L.E.A. the other two. Out of nine managers for a controlled school the foundation would appoint three. The six non-foundation managers would be appointed by the L.E.A. unless there is a minor authority, in which case the minor authority may appoint either two (one-third of the six) or three (one-half of the six) and the L.E.A. the remainder of the six not so appointed.

If the number of managers should be twelve, for an aided school or a special agreement school, the foundation would appoint eight of the twelve,

the remaining four being appointed by the L.E.A., unless the school is situated in the area of a minor authority, in which case the minor authority would appoint two of the four non-foundation managers and the L.E.A. the other two.

In the case of a controlled school with twelve managers, the foundation would appoint four and the L.E.A. would appoint the remaining eight, unless in the area of a minor authority, in which case the minor authority would appoint either three or four of the eight and the L.E.A. the remainder.

Under Sect. 33 of the *Elementary Education Act, 1876*, the expenses of a School Attendance Committee (appointed by an urban sanitary authority whose district was co-extensive with any parish or parishes not within the jurisdiction of a School Board) were to be paid out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district *according to the rateable value of each parish.*

Sect. 5 of the *Education Act, 1902*, stated "school boards and school attendance committees shall be abolished."

The "powers and duties" of the school boards and school attendance committees were transferred to the "Local Education Authority for Elementary Education" for their respective areas.

Sect. 18 of the 1902 Act authorised a county council to pay expenses of an urban district, *other than a borough*, in a manner provided by Sect. 33 of the *Elementary Education Act, 1876.*

Sect. 18 of the 1902 Act stated in a proviso thereto :—

(*a*) The county council *may, if they think fit*, charge any expenses incurred by them under this Act, with respect to education other than elementary on any parish or parishes served by the school or college in connection with which the expenses have been incurred ; and

(*c*) The county council *shall charge such portion* as they think fit, *not being less than one-half* or more than three-fourths of any expenses incurred by them in respect of capital expenditure or rent on account of the provision or improvement of any public elementary school on the parish or parishes served by the school ; and

(*d*) The county council *shall raise such portion*, as they think fit, *not being less than one-half* or more than three-fourths of any expenses incurred to meet the liabilities on account of loans or rent of any school board transferred to them, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area.

As the county council were ***compelled*** to charge certain expenses on the area of a minor authority so far as these related to elementary education, the minor authority under Sect. 6 of the 1902 Act were authorised to appoint a proportion of the managers of public elementary schools serving their area.

Although Sect. 36 of the *Education Act, 1918*, stated that *it shall not be obligatory* on a county council to change or raise within particular areas any portion of such expenses mentioned in Subsects. (*c*) and (*d*) of Sect. 18 of the *Education Act, 1902*, but they had the option of doing this, no change was made in the section authorising the minor authority to appoint a proportion of managers for any public elementary school in their area.

The privilege of appointing managers for *primary schools* by a minor authority is retained by this 1944 Act (or for groups of primary schools) but *it is not extended to appointing a proportion of the governors of any secondary school in their area.* The minor authority connected with former public elementary senior (modern) schools, which under this Act become secondary schools, are excluded from their power of appointing a proportion of the non-foundation governors.

The L.E.A. *may*, however, ask the minor authority to nominate a governor.

19. Governors of secondary schools.—(1) The instrument of government for every county secondary school shall provide for the constitution of a body of governors consisting of such number of persons appointed in such manner as the local education authority may determine.

(2) The instrument of government for every voluntary secondary school shall provide for the constitution of a body of governors of the school consisting of such number of persons as the Minister may after consultation with the local education authority determine:

Provided that—

(*a*) where the school is a controlled school, one-third of the governors shall be foundation governors and two-thirds of the governors shall be appointed by the local education authority;

(*b*) where the school is an aided school or a special agreement school, two-thirds of the governors shall be foundation governors and one-third of the governors shall be appointed by the local education authority.

The possession of a separate body of governors (in accordance with the instrument of government) will help to some extent to preserve the independence of each school.

The recently issued Memorandum on the *Principles of Government in Maintained Schools* states the division of functions between the L.E.A. which maintains a secondary school, the Governing Body, which has the supervision of the conduct and activities of the school, and the head master or head mistress of the school. [Cmd. 6523. Price 2d.] See Appendix B for a reprint of this.

The governors of a county secondary school may be appointed in accordance with the instrument of government *which has been approved by the Minister* and shall consist of such numbers and be appointed in such manner as the L.E.A. determine. The L.E.A. have a fairly free hand in the appointment of governors for their own schools, if they first get the approval of the Minister to their views thereon, as expressed in the articles of government which they themselves have drafted.

The case of voluntary secondary schools, however, is rather different and the order for the instrument of government of these is made by the Minister who, however, will consult the L.E.A. before issuing the order.

The number of governors for a voluntary secondary school will be fixed by the Minister, but to comply with this section the number of governors should be a multiple of three and the proportions of foundation governors, and governors appointed by the L.E.A. will be similar to the *proportion* of managers for primary schools (except that a minor authority in whose area a secondary school is situated, have no *statutory right* to appoint any non-foundation governors). In the case of a controlled secondary school with nine governors, six will be appointed by the L.E.A. and three by the foundation originally responsible for the school. If twelve governors, eight will be appointed by the L.E.A.

In the case of an aided secondary school or a special agreement secondary school the proportions are reversed. If nine governors, three are appointed by the L.E.A. and six by the foundation. If twelve governors, four are appointed by the L.E.A. and eight by the foundation, and so on.

20. Grouping of schools under one management.—(1) A local education authority may make an arrangement for the constitution of a single governing body for any two or more county schools or voluntary schools maintained 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 thereof.

The powers of the L.E.A. under this subsection may prove of greater value in larger urban areas than in scattered rural areas. It may be found a more practical arrangement to have one body of managers for a *group* of county primary schools, relatively near each other, than to have a separate body of managers for each individual school, but there may be difficulties in preserving the independence, so desirable for secondary schools, if many of *these* are grouped under one body of governors.

During the discussions in Committee on this Section of the Bill it was stated that leading educational administrators had asked for *powers of* grouping contiguous secondary schools to be granted, but had stated that it was not their intention (nor, it was stated, was it the intention of the Government) that such powers should be misused. It is the intention that schools should have their own governing bodies, but this Section would give power in certain cases to amalgamate a few *where desired locally*.

In any suggested grouping of voluntary schools the consent of the managers or governors of individual schools concerned *must be obtained* before a group is formed.

(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.

(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 between the local education authority and the managers or governors of those schools, or, in default of such agreement, by the Minister.

As a rule the L.E.A. may use its own discretion in the appointment of managers of primary *county* schools, both as to numbers and method of appointment (except in the case of a primary school serving an area in which there is a " minor authority.") This freedom is here extended to the appointment of governors for a *group* of county secondary schools, but with no reference to a minor authority.

If, however, all or any of the schools which it is proposed to group should be voluntary schools, then the managers or governors of the voluntary schools which will constitute, or be included in, the group shall be consulted, and an agreement made between the L.E.A. and these managers or governors,

as to the *number and appointment of managers or governors for the group.* In case no agreement should be arrived at, the Minister may determine the question *if* a grouping is to take place.

(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, shall make provision for securing that the minor authority is adequately represented upon the governing body constituted in pursuance of the arrangement.

If the arrangement for grouping should include a primary school serving an area in which there is a minor authority, the minor authority must be adequately represented upon the body appointed for the group. What is meant by "*adequately*" will depend upon the particular circumstances of each case. In some cases the proportion of such schools included in the group *may* require a variation in the number of managers, differing somewhat from the proportion for managers for one school.

(5) Every arrangement made under this section may, if it does not relate to any voluntary school, be terminated 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 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 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.

Arrangements for grouping schools under one body of managers or governors may be terminated :—

(i) If all the schools included in the group are "county" schools : the L.E.A. which made the arrangement may terminate it *at any time.* An individual manager or governor has no prescriptive right to continue as a manager or governor of such *group* of schools.

(ii) If the arrangement includes "voluntary" schools : the arrangement may be terminated by agreement between the L.E.A. and the *governing body of the group.*

(iii) If no agreement be made for the termination of the arrangement for grouping, it may be terminated by one year's notice on either side.

It is the managers or governors *of the schools included in the group* with which the L.E.A. makes an agreement. Under subsection (5) it is the *governing body of the group* which agrees to terminate the arrangement.

This follows from the next following subsection.

(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 to

the schools, and for the purposes of any enactment 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.

Where two or more schools are grouped under one management, the *statutory* arrangements for the appointment of managers or governors for *each separate school* do not apply.

The governing body of the *group* of schools takes the place of a separate body for each school in the group, and the managers or governors of the *group* shall be deemed to be the managers or governors of *each school* in the group.

21. Proceedings of managers and governors of county and voluntary schools.—(1) Any manager or governor of a county school or of a voluntary school may resign his office, and any such manager or governor appointed by a local education authority or by a minor authority shall be removable by the authority by whom he was appointed.

(2) The provisions of the Fourth Schedule to this Act shall have effect with respect to the meetings and proceedings of the managers or governors of any county school or voluntary school.

The Fourth Schedule to this Act gives some particulars regarding the meetings and proceedings of managers or governors of single schools or of grouped schools, as to a quorum, defects in the appointment of managers or governors, methods of voting, etc.

There is, however, no sanction or penalty included therein to ensure that the managers or governors shall hold a meeting at least once in three months.

The minute book recording the minutes of their proceedings should be produced at each meeting. The minutes of the last preceding meeting should be read and confirmed at each meeting. This confirmation by them is necessary, for only the body which passed the minutes can say whether they form a correct record or not of their former proceedings.

(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.

This subsection enables the L.E.A. to have a full knowledge of the procedure of managers or governors of voluntary schools maintained by them, as well as of what is done in county primary and secondary schools.

In a number of cases at present the managers or governors send a copy of their minutes to the L.E.A. which maintains or makes a grant towards the expenses of their school.

22. Powers of local education authority as to use and care of premises

of voluntary schools.—(1) The managers or governors of a controlled school shall be entitled to determine the use to which the school premises 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 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 as to the occupation and use of the school premises of a controlled school as they think fit.

The L.E.A. pay all expenses both for maintenance and for repairs and improvements to the premises of a *controlled* school, and two-thirds of the managers or governors are appointed by them.

As, however, the school buildings remain the property of the foundation, the *foundation managers* have the right to decide what should be done with those buildings on Sunday.

This subsection obviates the necessity of the L.E.A. (the county council in country districts) being referred to every time the village school is wanted for some non-educational purpose, some public meeting, or a flower-show, etc.

(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 or special agreement school to provide free of charge 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.

The L.E.A. have a wide sphere of control over the use to which a *controlled* school may be put out of school hours (except for Sundays), but even in the case of an *aided* school or a *special agreement* school, the L.E.A. may *if there be no other accommodation available* require the managers or governors to provide (free of rent-charge) accommodation for any purpose connected with the welfare of the young or with education on not more than three days per week, out of school hours. This may be of special value in a village where evening institutes or youth organisations are at work, or courses for further education are organised for the immediate district.

(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 shall be under the control of the managers or governors thereof.

The original form of this section stated that school premises of a controlled school should be occupied and used *in accordance with the directions of the local education authority* : subsection (1) was amended in the House of Lords (see Note on Subsection (1) above) to obviate too frequent reference to the L.E.A.

Subsection (3) here extends this limited freedom of use by the managers or governors to *any* voluntary school.

The words " of any enactment " include Section 128 of the *Local Government Act, 1933*, which refers to the use of a schoolroom for inquiries by the Ministry of Education, etc., and Section 54 of the same Act, as to use of a schoolroom by election candidates.

(4) At any controlled school or special agreement school the persons employed for the purposes of the care and maintenance 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.

For a *controlled school* the L.E.A. have control of the appointment and dismissal of teachers, and this Subsection (3) secures to them the control of the appointment and dismissal of other employees in the school. This may include not only the caretaker of a school but also persons employed under the regulations for preparation and service of milk, meals or other refreshments.

Similar conditions apply to teachers, and to other employees in a *special agreement school* who are not teachers (except for some reservations concerning reserved teachers).

In an *aided school*, under this subsection, the L.E.A. have power to *give directions* to the managers or governors as to the number and conditions of service of caretakers and other employees who are not teachers.

In *Gillow and others* v. *Durham County Council*, in November, 1912, [1913], A.C. 54, H.L., it was held that the powers of voluntary school managers (for public elementary schools) included that of " general management," and as part of this, the responsibility for looking after the school and *appointing the necessary caretakers and cleaners*. (See Ikin and Sparke, *Compendium of Precedents and Judgments*, p. 231 : also Ikin and Sparke, *Changes in the 1921 Education Act*, p. 54.)

An endeavour was made to change this statement of law in the 1944 Education Bill, and to state in the above subsection that " the L.E.A. may give directions to the managers or governors of an aided school as to the '*appointment dismissal*' and conditions of service of persons employed at the school for such purposes." In the Committee stage an amendment was made to substitute the word " number " for the words " appointment dismissal."

In view of this it would appear that the only powers possessed by the L.E.A. for directing the managers or governors of an *aided* school to dismiss a caretaker or cleaner, would be to direct that any act or omission of such caretaker or cleaner by which the efficiency of the school is affected (e.g., defective cleaning or inefficient heating) shall be remedied either by dismissal of the inefficient employee, or by other effective means.

It would be *ultra vires* on the part of the L.E.A. to insert in the rules of management of primary schools any conditions for the dismissal of the caretaker of an *aided* school.

(5) In relation to any school with respect to which the trust deed 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.

This Subsection (4) enables the L.E.A. to give similar directions to *any person claiming proprietary rights* to control the occupation and use of the school premises, in accordance with any trust deed relating thereto. The statutory powers of the L.E.A. herein contained override any terms in a trust deed inconsistent therewith.

Taking the section as a whole, on the occasions when managers or governors are responsible for letting the premises out of school hours, they may allow their use *for any purpose* they approve. On occasions when the L.E.A. control the letting, a school may be used *in the interests of the young*, so that altogether the school may be used out of school hours for what constitutes the greater part of the life of the community.

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 and, subject to the provisions hereinafter contained as to religious education, in every voluntary school except an aided secondary school, the secular instruction to be given to the pupils shall, save in so far as may be otherwise provided by the rules of management or articles of government for the school, be under the control of the local education authority.

Section 29 (1) of the *Education Act, 1921*, stated :—

" The L.E.A. shall be responsible for, and have *the control of, all secular instruction* in *public elementary* schools not provided by them."

The 1944 Act makes a change with regard to the control of secular instruction in those voluntary secondary schools which formerly were senior (or central) non-provided elementary schools. They will not be elementary or primary schools any longer.

As regards county schools, controlled schools, or special agreement schools, unless the " rules of management " for primary schools (*drawn up by order of the L.E.A.*) delegate matters of secular instruction to the managers of primary schools, the control of such primary school secular instruction will continue under the control of the L.E.A.

Similarly, unless the " articles of government " provide otherwise, the secular instruction in county secondary schools, controlled secondary schools and special agreement secondary schools will be under the control of the L.E.A.

(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 of the school.

The previous Subsection (1) deals with one group of secondary schools, county, controlled and special agreement schools. This Subsection (2) deals with *aided* secondary schools. For these secondary schools, unless the articles of government (made by order of the Minister) provide otherwise, the control of secular instruction will be under the governors of the school. So far as the older endowed or grammar school type of secondary schools are concerned, this is a continuation of the former traditions of these schools. These were not " public elementary schools " affected by Section 29 of the 1921 Act. Other schools which were formerly public elementary schools but are now aided secondary schools are brought into line with the older ones.

The L.E.A. will have an opportunity of dealing with the general trend of education to be given in the secondary schools in their " development plan." (Section 11 (2) (*a*).)

After the approval of that plan by the Minister, the governors cannot change the general character of the secular instruction of their school without an amendment of the " development plan."

The governing body would have the general direction of the curriculum from day to day and the head teacher would have responsibility for the internal organisation of the school including the discipline necessary to keep the pupils applied to their studies and to carry out the curriculum in the sense desired by the governing body, and the head teacher should be able to meet the governing body. (See Appendix B.)

(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 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 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.

If the L.E.A., or the Minister, include matters relating to secular instruction in the rules of management or in the " articles of government," these rules or articles will control the secular instruction in the primary or secondary schools so far as they are definitely specific in their directions.

If there are points outside these rules or articles, the power to control the secular instruction provided in any school will include :—

(i) the power to determine the times at which the *school session* shall begin and end on any day ;

(ii) to determine the times at which the *school terms* shall begin and end ;

(iii) 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.

This last-mentioned power enables the L.E.A. (or governors) to insist on a pupil attending a centre or class for manual instruction, for cookery instruction, for science instruction, for art instruction or for physical training, where such or similar arrangements are provided away from the school.

In *Bunt* v. *Kent* (1913), 78 J.P. 39, it was held that attendances at classes for practical instruction may be enforced, whether held in the school-house or elsewhere, if the distance from the child's residence is within the distance prescribed by the byelaws.

The Earl of Selborne stated in the House of Lords that the Minister will make regulations providing for simple teaching as to the right and duty of the citizen to defend his native land.

This subsection entitles the L.E.A. to determine the school holidays. That power, however, is subject to what may be otherwise provided by the rules of management or articles of government, so that under such rules or articles the managers or governors may be given the power of selecting an occasional day or half-day holiday. In so far as the matter pertains to articles of *government* it can be settled by the Minister at the stage when those articles are approved; but if the matter (of managers or governors having powers to deal with such occasional holidays) is not dealt with in the articles of government, the Minister would still have power under Section 67 to settle any dispute between the managers or governors and the L.E.A. on such temporary occasional closures.

24. Appointment and dismissal of teachers in county schools and in voluntary schools.—(1) In every county school and, subject to the provisions hereinafter contained as to religious education, in every controlled school and special agreement school, the appointment of teachers shall, save in so far as may be otherwise provided by the rules of management or articles of government for the school, be under the control of the local education authority, and no teacher shall be dismissed except by the authority.

This secures to the L.E.A. the power of appointment and dismissal of teachers in both *controlled* schools and *special agreement* schools, in so far as the question of such appointment or dismissal is not dealt with in the " rules of management " for primary schools where there are managers, or in the " articles of government " for secondary schools where there are governors.

(2) In every aided school the respective functions of the local education authority and of the managers or governors 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:

If any question arises as to the respective functions of the L.E.A. and the managers or governors of an *aided* school, concerning powers of appointment or dismissal of teachers, (subject to the following proviso) this question will be regulated by the " rules of management " or the " articles of government " :—

Provided that the rules of management or articles of government for every aided school—

(*a*) shall make provision for the appointment of the teachers by the managers or governors of the school, for enabling the local education authority to determine the number of teachers to be employed, and for enabling the authority, except for reasons for which the managers or governors are expressly empowered by this Act to dismiss teachers without such consent, to prohibit the dismissal of teachers without the consent of the authority and to require the dismissal of any teacher; and

The " rules of management " or " articles of government " for an *aided* school shall provide—

(i) that the L.E.A. shall decide the *number* of teachers to be employed in the school to which they relate. (The L.E.A. have the responsibility to prescribe the number [and in some cases the qualifications] of teachers, but the governors will have a wide latitude in the actual appointment);

(ii) the L.E.A. may require the dismissal of a teacher;

(iii) the L.E.A. may prohibit the dismissal of a teacher, except in a case where the managers or governors are expressly empowered by the Act to dismiss the teacher without the consent of the L.E.A. (e.g., if the dismissal be stated to be in connection with religious instruction).

If the L.E.A. were prohibiting the dismissal of a teacher under (iii) or desiring the dismissal of a teacher under (ii) above, and if either this prohibition of dismissal or request for dismissal were contrary to the desires of the managers or governors, such a disagreement would be a proper subject matter to be referred to the Minister under Section 67 (1) below.

The appointment of a teacher should be made by a definite resolution of the managers at a properly convened meeting of the managers or governors and if this resolution be entered in the Minute Book and the minute signed in due course as correct, this will be sufficient evidence of the appointment (*Knight* v. *Halliwell* (1874), 43 L.J., M.C. 113). But according to *Powell* v. *Lee* (1908), 6 L.G.R. 840, the appointment, even if entered in the Minute Book, is not complete unless it has been authoritatively communicated to the teacher appointed. If objection to an appointment should be taken on the grounds that the body of managers or governors which professed to make the appointment was not a properly constituted body owing to some defect in the election, appointment or qualification of a manager, under Section 99 (2) of this Act the Minister has power to validate such appointment if he thinks it desirable or expedient to do this. (See also *Meyers* v. *Hennell*, [1912] 2 Ch. 256.)

(*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, for enabling the authority to prohibit the appointment, without the consent of the authority, of teachers to be employed for giving secular instruction, and for enabling the authority to give directions as to the educational qualifications of the teachers to be so employed.

This proviso secures that the managers or governors of a voluntary school must consult the L.E.A. as regards the appointment of teachers to give secular instruction, as the L.E.A. may prohibit such an appointment if made without their consent. An agreement should be made between the managers or governors and the L.E.A. as to the relative position of each party in connection with such an appointment, especially for the L.E.A. to give directions not only as to the *number* of teachers but as to the *qualifications* of teachers for giving secular instruction. This may be incorporated in the rules of management or the articles of government, after reference to the Minister in case of failure to agree.

(3) No woman shall be disqualified for employment as a teacher in any county school or voluntary school or be dismissed from such employment by reason only of marriage.

This subsection will cancel the regulations of some L.E.A.s which exist at present. Under one authority the following regulation has been in existence since 1906 :—

" Married women are ineligible for appointment on the permanent staff of any school. All Mistresses, whether Head or Assistant, shall be required to resign their appointment in the event of marriage, within one month from such event."

This regulation was first introduced in that particular case at the instigation of parents whose daughters had qualified as teachers but could not secure an appointment in their home town, while teachers were retained in the schools after marriage. It was thus introduced in this particular area to make vacancies for freshly qualified mistresses by dismissing others on their marriage.

This will no longer be possible, but special arrangements will be necessary for absence for confinement cases. In some cases where the marriage bar has not existed, three months' leave of absence has been authorised, two months before confinement, and one month after.

See Sect. 205 of the *Public Health Act, 1936* (in Appendix A) for compulsory absence in such cases in a factory or workshop.

See also *Sex Disqualification (Removal) Act, 1919* (in Appendix A).

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 in every county school and in every voluntary school shall begin with collective worship on the part of all pupils in attendance at the school

and the arrangements made therefor shall provide for a single act of worship attended by all such pupils unless, in the opinion of the local education authority or in the case of a voluntary school of the managers or governors thereof, the school premises are such as to make it impracticable to assemble them for that purpose.

(2) Subject to the provisions of this section religious instruction shall be given in every county school and in every voluntary school.

In Section 25 there is a recognition of the value to the future of the country of religious worship and religious instruction in the schools, and *for the first time in our law of education these are made compulsory in all schools*, both county schools and voluntary schools :—

(i) The school day in each school must commence with collective or corporate worship by all pupils, unless exempted therefrom by request of their parents ;

(ii) Religious instruction must be given in every school, both county and voluntary.

(*a*) The "*form*" of the collective worship is not defined, it is left to the discretion of the L.E.A. or of the managers or governors of the individual schools, or if these give no instructions therefor, the " form " will be left to the discretion of the head teacher. Certain restrictions applicable to county schools are included in Section 26 later. Where the school premises are such as to make it impracticable (as in the absence of an assembly hall) to assemble them for that purpose, worship by some classes may take place for each class in their own classroom, but this latter course should only be adopted where it is absolutely impossible to accommodate all in the school hall. If any question or dispute on this point should arise between the managers or governors and the L.E.A. it would go to the Minister on the application of the managers or governors, or of the L.E.A.

(*b*) The religious instruction may be given *at any time during the school session*, it is not restricted to the beginning or the end of the session, or the beginning and the end as under Section 27 (1) (*b*) of the 1921 Act.

This section refers to religious observance and instruction in primary and secondary schools only : and it refers only to the school, *meeting as a school*.

(*c*) The question of compulsion has so far not arisen in connection with camp schools. In these the L.E.A. in taking sole charge of the child for two or three weeks, accepts responsibility for his or her moral welfare during that period. The authority is there concerned with the individual life and duties of the child, and not merely with religious observance and instruction during school hours. Under Section 68 of the *Children and Young Persons Act, 1933*, and Section 52 of the *Poor Law Act, 1930*, in any residential school maintained by the Authority, regard should be had to the religious life of the child. There is no statutory exemption from the Cowper-Temper clause nor is there anything to make it compulsory for the Authority to provide denominational instruction in a *camp* school. In the usual British way of tolerance and good sense in the camp schools, this problem has solved itself. The matter having been left as far as possible to the teachers to arrange, their standard of professional honour is such that, in a camp school, they will neither inflict on a child any religious intolerance, nor neglect the legitimate desires of the parent in honour to the children committed to their care.

(3) It shall not be required, as a condition of any pupil attending any county school or a voluntary school, that he shall attend or abstain from attending any Sunday school or any place of religious worship.

During the debates on the 1870 Education Bill the fundamental difference between *ecclesiastical authority* on the one hand, and the right of *individual opinion* on religious matters on the other, which had been so violently evinced in many former discussions on education, appeared to permeate the views of the majority of the members who spoke on that Bill.

As in many districts there might be, say, a Church of England elementary school only, which children in that area could attend, it was thought that there might be some risk of parents being deprived of their right to withdraw children from religious instruction, if the school managers had the power to make it a condition of attendance at *their* school that all children must attend the Sunday School, or attend the Anglican Church with which the school was connected, or that children must abstain, say, from attendance at a Chapel under the control of one of the Free Churches.

To remove this risk, this subsection was included in Section 7 of the *Education Act, 1870*, and is here repeated in the 1944 Act.

(4) If the parent of any pupil in attendance at any county school or any voluntary school requests 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 from such attendance accordingly.

Here the right to individual opinion, referred to above, is safeguarded. It must be noted, however, that the withdrawal must be at the *request of the parent* and not at the caprice of the pupil. It will be advisable for all such requests, if made, to be made in writing so as to obviate conflict of evidence, e.g. if a parent should say that he had asked (orally) for his child to be exempted, and the head teacher should deny that he had been asked.

Section 7 of the *Education Act, 1870*, stated, " any scholar may be ' withdrawn ' by his parents from such [religious] observance or instruction without forfeiting any of the other benefits of the school."

When this clause (of the 1870 Bill) was under discussion in the House, an amendment was moved to add the words "*from the school*" after the word "withdrawn." This amendment was negatived by 379 votes to 35. Parliament would not allow pupils to be withdrawn from the school: they might be withdrawn from a class, but not from the school. It was feared that if the practice of withdrawal should be extended, the Board Schools, which were to be established under the Act, might become secular schools. It was recognised that the country was solidly against merely secular education.

(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 during such periods as are reasonably necessary for the purpose of enabling him to receive religious instruction in accordance with the arrangements :

This subsection specifies some of the conditions under which a pupil, withdrawn from religious worship or instruction, *may be withdrawn from the school.*

Religious instruction is now made compulsory in all schools, and withdrawal from the school is now permissible in order that religious instruction, *of the type favoured by the parent,* may be received by the pupil elsewhere, if not available in the school where the pupil is registered.

But before sanction is given for withdrawal *from the school* for this purpose the L.E.A. must be satisfied :—

(i) That *the parent desires* the pupil to receive religious instruction, of a kind not provided in the school, during the periods when he is excused from attendance ;

(ii) 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*

(iii) *That arrangements have been made* for him to receive religious instruction during school hours, elsewhere.

Under (ii) above, the parent who desires, say, C. of E. instruction, cannot withdraw his child from a county school, if there should be a C. of E. school which he could attend with " reasonable convenience."

Under (iii) it is not intended that a pupil should be withdrawn so as to attend school at, say, 9.45 a.m., instead of at 9 a.m., in order that he may have an extra half-hour at home. *The parent should be asked* to satisfy the L.E.A. that *arrangements have been made* for his child to receive religious instruction elsewhere, and to specify what the arrangements are, when a request for withdrawal is made. Formerly, under what was known as the " Anson Byelaw," a pupil might be withdrawn without these conditions as to religious instruction elsewhere, but as all children of compulsory school age will be registered, and as the *obligation to attend school is laid down by statute, school attendance byelaws will no longer be needed* and the Anson Byelaw will no longer be applicable. [For details of the " Anson Byelaw " see Ikin and Sparke, *Compendium of Precedents,* p. 206, and Ikin and Sparke, *The Education Act, 1936,* p. 50.]

If a pupil be withdrawn from religious instruction in the school, for other reasons than to receive religious instruction elsewhere, he may be provided in the school with secular occupation during the time usually devoted to religious instruction by his fellow pupils.

If the necessary conditions (i), (ii) and (iii) are fulfilled, the L.E.A. cannot prevent the child being withdrawn, and the parent is entitled to determine the day or days on which he will withdraw his child under the prescribed conditions, subject, however, to the proviso below.

The fact that the Act lays down certain conditions under which pupils may be withdrawn *from the school* to receive religious instruction elsewhere,

would imply that pupils cannot be withdrawn where such conditions do not exist, on the general principle, *Expressio unius est exclusio alterius.* [*Blackburn* v. *Flavelle* (1881), 6 App. Cas. 628.]

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.

Withdrawal from school is not sanctioned unless the religious instruction provided elsewhere can be obtained either at the beginning or the end of a school session, in order that the pupil may be in attendance at the school each day, except for the periods when such instruction is given elsewhere. Special arrangements in such a case, in a *county secondary school,* may be made under Section 26.

(6) No directions shall be given by the local education authority as to the secular instruction 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 for that purpose, unless arrangements are made whereby the pupil shall receive such instruction in the school at some other time.

Any directions which may be given by the L.E.A. to the managers or governors of a voluntary school regarding the secular instruction in the school must not interfere with the arrangements for the religious instruction given therein.

(i) Reasonable facilities for religious instruction *during school hours* must be allowed for in all such directions given.

(ii) If pupils should be obliged to attend (say at a cookery class or a class for manual instruction or for physical exercises) for secular instruction at a time when religious instruction would be received normally, arrangements must be made whereby religious instruction is obtainable *in the school* at some other time. Such difficulties may arise if a cookery class commences, say, at 9 a.m. and is held at a centre away from the school.

(7) Where the parent of any pupil who is a boarder at a county school or 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, 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.

This subsection is designed to secure to pupils who are *boarders* in county or voluntary schools suitable facilities for denominational worship and instruction.

L.E.A.s in the past have been concerned chiefly with day schools, elementary and secondary, and the evenings and Sundays were spent at home by the pupils.

Under other sections of the Act the L.E.A. may now provide boarding schools and hostels.

This subsection will enable pupils at boarding schools, where they receive religious instruction according to an agreed syllabus, to have opportunities for training in church membership and church worship *such as their home provided for day pupils.*

The subsection authorises arrangements being made on the school premises, if outside arrangements are not practicable, but *in this case the cost must be met by the denominations concerned.*

This is in accordance with the former provisions of Section 64 (4) of the *Education Act, 1921*, where in a special school in accordance with the wishes of the parent of a pupil, the pupil shall have "facilities for receiving religious instruction and attending religious services conducted in accordance with the parent's persuasion, which must be duly registered on admission to the school."

Also paragraph 3 of the Fourth Schedule to the *Children and Young Persons Act, 1933*, states with regard to pupils sent to Approved Schools :—

"A minister of the religious persuasion to which a person in an approved school belongs may visit him at the school on such days, at such times, and on such conditions, as may be fixed by rules made by the Secretary of State, for the purpose of affording him religious assistance and instruction."

26. Special provisions as to religious education in county schools.—Subject as hereinafter provided, the collective worship required by subsection (1) of the last foregoing section shall not, in any county school, be distinctive of any particular religious denomination, and the religious instruction given to any pupils 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 adopted for the school or for those pupils and shall not include any catechism or formulary which is distinctive of any particular religious denomination :

According to the Oxford Dictionary "A denomination is a religious sect or body having a common faith and organisation and designated by a distinctive name."

During the discussion in Parliament on the 1870 Bill, the fear was expressed lest teachers in the rate-aided Board Schools to be established under the Act, should teach Church of England doctrines, or Church of Rome doctrines, and this fear considerably affected the attitude of members to other educational questions. To obviate this possibility, on the motion of Mr. Cowper-Temple, the Member for South Hampshire, the following clause was included in Section 8 of that Act :—

"No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the [Board] School."

When this clause was inserted, it was not intended to exclude doctrinal exposition of the Bible ; it was a compromise not merely between :—

(i) absolute secularism and denominationalism ;

but also between

(ii) denominationalism and the views of those who wished (if the Bible were read) that it should be read without note or comment.

Under this Subsection (1) of Section 26 the principles of the Cowper-Temple clause of the 1870 Act are made applicable in all county schools to corporate worship as well as to religious instruction.

A question may arise as to whether the Minister has power (under Section 67) to decide what constitutes an infringement of the Cowper-Temple clause ? By Section 16 of the *Elementary Education Act, 1870*, the Education Department were empowered to give a final decision, and the School Board could be deemed to be in default. [See Note on Section 99 later for a School Board in default.] This section of the 1870 Act has been repealed and apparently the Minister has no power to interfere even if a case be reported to him, unless and until a competent Court has decided that a L.E.A. or the managers or governors of a county school have contravened the Statute.

If this is so, the course would seem to be to make *an application to the District Auditor* to disallow any items of expenditure incurred in giving the religious instruction they are not empowered to give by this Act, or to make an application to the Court for an injunction.

N.B.—It may be noted that on one occasion the Board of Education stated that, after consulting the Law Officers of the Crown, the Board were of opinion that the teaching of the Apostles Creed was not a contravention of the Cowper-Temple clause, but that the teaching of that part of the Church of England Catechism explanatory thereof would be a contravention.

The right of withdrawal from religious observance and from religious instruction applies to both county schools and voluntary schools, an arrangement which some parents may consider of value in what is commonly known as a " single school " area. [See definition of " single school area," Section 105 (3) later.]

Provided that, where a county secondary school is so situated that arrangements cannot conveniently be made for the withdrawal of pupils 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.

In the case of some *county secondary schools* situated, say, in the open country, in order to serve the needs of a number of villages, there may be no building *reasonably accessible* to which children can be withdrawn for denominational instruction. In such cases the authority will be required, unless in their view there are special circumstances which would make it unreasonable to do so, *to provide for the denominational instruction on the school premises.*

This is not in accordance entirely with the principle underlying the Cowper-Temple clause, but is an emergency arrangement made to meet special cases.

In such special cases it will be for the denomination to provide the teacher, and they will also be responsible for meeting the cost of the instruction. It must be noted that it is *for the parents to express their desire for such instruction,* and not for clergy or ministers to make an application for this.

27. Special provisions as to religious education in controlled schools.—(1) Where the parents of any pupils in attendance at a controlled school request that they may receive religious instruction 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 controlled school, the foundation managers or foundation governors shall, unless they are satisfied 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.

In *controlled schools,* where the L.E.A. have taken over the liability for meeting the cost of rehabilitation, repairs, etc., owing to the former managers being unable to provide 50 per cent. of the cost therefor, the religious instruction will be in accordance with an " agreed syllabus," but denominational instruction may be available (if the denomination which formerly provided the school can arrange for this) for not more than two periods a week *for those children whose parents desire them to receive it.* The arrangements for this shall be made by the *foundation managers or governors,* who form one-third of the whole body.

There is nothing in this subsection to prevent a clergyman, a priest, or a minister from being appointed by his own church or denomination to give this religious instruction during the two periods, provided that the instruction so given is in accordance with the provisions of the trust deed, or in accord with *the practice of the school before it became a controlled school.*

(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 persons (hereinafter referred to as " reserved teachers ") 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.

The duty of the foundation managers, or foundation governors, to secure the giving of special religious instruction for two periods per week (unless this be impracticable), applies in *all* controlled schools, whatever the number of the teaching staff, *if the parents desire this to be given.*

In addition to this, *where the number of teachers exceeds two* the L.E.A. shall include in the teachers they appoint, persons who may be selected for their fitness or competence to give such religious instruction as is required during the specified two periods per week, and *who are definitely appointed to do this.*

These teachers will be styled "*reserved teachers.*"

The number of "reserved" teachers appointed to serve in a *controlled* school shall not exceed one-fifth of the total number of the teachers serving therein. Where the total number of teachers employed therein is not a multiple of five, the next higher multiple of five will be used to compute the maximum number of reserved teachers. Where 3, 4 or 5 teachers are employed in a school, one of these may have been appointed as a reserved teacher; with 6, 7, 8, 9 or 10 teachers so employed not more than two reserved teachers may be appointed; with 11, 12, 13, 14 or 15 teachers, not more than three such teachers; and so on with other numbers, but in accordance with the next subsection, *the head teacher of a controlled school shall not be a reserved teacher while holding that position.*

When a voluntary school is handed over to the L.E.A. to be maintained by them as a controlled school, it would be a wise procedure to agree with the managers or governors concerning the existing teachers on the staff as to which of these shall be considered as reserved teachers. This would obviate any difficulty arising later when the L.E.A. may have to make an appointment (e.g., through a resignation), as to whether the teacher so to be appointed shall be a reserved teacher or not. A similar precaution may well be taken in connection with each of the existing teachers of a special agreement school: which are to be considered as the reserved teachers?

(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 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.

The words "while holding that position" ensures that it may be possible for a reserved teacher to become a head teacher, when he would cease to be a reserved teacher.

When the L.E.A. propose to appoint a head teacher to a *controlled* school (who must *not be appointed as a reserved teacher*), the managers or governors of the school must be informed of the person they propose to appoint, and the L.E.A. must consider any representations made thereon.

This does not bind the L.E.A. to do more than *consider* these managers or governors' representations. To compel the L.E.A. to act in strict accordance with their recommendations would be contrary to the overriding power that the appointment of teachers is in the hands of the L.E.A. because they are responsible for all charges in connection with the school.

(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.

In the case of the appointment of a "reserved" teacher, the foundation managers or governors must be notified of the proposed appointment, and if they object, on the grounds of the unsuitability or incompetence of the person recommended to give the religious instruction necessary, during the special two periods per week, that particular person must not be appointed, but it is only on the special grounds mentioned that the foundation managers or governors (who form one-third of the body of managers or governors) can veto the appointment.

(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 him from employment as a reserved teacher in the school.

Just as the foundation managers or foundation governors may object to the appointment of a particular person as a *reserved* teacher in a controlled school on the grounds of, what may seem to them, unsuitability, so these same managers or governors may *require* the L.E.A. to dismiss a particular *reserved* teacher from that school if, in their opinion, that teacher has failed to give, efficiently and suitably, the religious instruction which he was specially appointed to give.

(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 adopted for the school or for those pupils.

Except for the special religious instruction which may be given on *not more* than two periods per week, the religious instruction in a controlled

school must be in accordance with an agreed syllabus. (See the Fifth Schedule to this Act.)

28. Special provisions as to religious education in aided schools and in special agreement schools.—(1) The religious instruction given to the pupils in attendance at an aided school or at a special agreement school shall be under the control of the managers or governors of the school and shall be in accordance with any 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 :

When the 1902 Education Bill was under discussion in the House, the question of what has been styled " one-man management " in voluntary schools was raised. To obviate danger of this, on the motion of Mr. Kenyon-Slaney (the Member for the Newport Division of Shropshire), a clause was inserted as Section 7 (6) of the 1902 Act by 211 to 41 votes. This clause placed the control of religious instruction *in the hands of the managers* (not of the clergyman or priest). There was a good deal of opposition to the clause by the Church party (who said it was an insult to the clergy), and an interference with the trust deeds of schools.

The clause was redrafted in the House of Lords and thenceforth it allowed the Bishop (or other superior denominational authority) to decide questions concerning the *character* of the religious instruction, as to whether or not it is in accordance with the trust deed (if any), but its *mode* is entirely in the hands of the managers.

Where there is no trust deed, the religious instruction in *aided* and *special agreement* schools will be in accordance with previous practice and will be under the control of the managers or governors.

Provided that where the parents of pupils in attendance at the school desire them to receive religious instruction in accordance with any agreed syllabus adopted by the local education authority 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 for religious instruction in accordance with that syllabus to be given to those pupils in the school during the times set apart 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.

The principle underlying this proviso was included first in Section 12 of the *Education Act, 1936* (now repealed), in connection with special agreement schools. It now enables pupils in attendance at an "*aided*" or at a *special agreement* school, *whose parents desire it,* to receive instruc-

tion in the school in accordance with the agreed syllabus in use in county schools in the same area, unless special circumstances prevent it. This is only applicable in cases where a pupil cannot with reasonable convenience be caused to attend a county school or a controlled school. Arrangements for this to be provided must be made by the managers or governors of the school, but if they are unwilling to make arrangements the L.E.A. may themselves make the necessary arrangements.

Here we have, in special cases, a statutory variation from the general principle underlying the Kenyon-Slaney clause, that the religious instruction in an aided or special agreement school shall be in the hands of the "*managers*."

(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 on that ground by the managers or governors of the school without the consent of the local education authority.

As the denominational religious instruction given in an aided school is under the control of the managers or governors, so the dismissal of teachers on grounds connected with the giving of such instruction, or the failure to give such instruction efficiently and suitably, is in the hands of the managers or governors. As the teacher has not given the denominational religious instruction which he agreed to give (by the fact that he accepted the office of teacher, which acceptance implied that he would give it) he has no grounds for appeal to the L.E.A. The managers or governors may dismiss him without the consent of the L.E.A. If, however, the teacher is of opinion that his dismissal is due to some other cause rather than due to matters in connection with religious instruction (the ostensible reason given for dismissal), he may appeal to the L.E.A. This subsection does not apply to teachers who are appointed to give religious instruction in accordance with an agreed syllabus, whether the managers or governors arrange for this, or whether the L.E.A. make the arrangements. [See also Section 29.]

(3) Where the special agreement made with respect to any special agreement school provides for the employment of reserved teachers, 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 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.

(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 him from employment as a reserved teacher in the school.

Under the *Education Act, 1936*, it was possible for an agreement to be made between the L.E.A. and the managers of a voluntary elementary school whereby the L.E.A. agreed to make a grant towards the establishment of a *senior* school and for the managers to relinquish some of their former statutory rights as to the appointment of teachers therein.

The Third Schedule to this 1944 Act revives the power to make agreements which the impact of war conditions had precluded being entered into within the specified times.

Where such an agreement authorises the appointment of " reserved " teachers to give denominational religious instruction, the *foundation* managers or governors have similar powers to decide as to the fitness or competence of teachers proposed to be appointed to give religious instruction in the school as aforementioned in the case of reserved teachers being appointed in a " *controlled* " school.

Similarly, the foundation managers or governors of a *special agreement* school may *require* the L.E.A. to transfer from the school a reserved teacher who has failed (in their opinion) to give efficiently or suitably the religious instruction to give which they were appointed.

There is one difference between the two cases :—

In a *controlled* school only one-third of the managers or governors are foundation managers or governors.

In a *special agreement* school two-thirds are foundation managers or governors.

29. Provisions as to religious instruction in accordance with agreed syllabus.—(1) The provisions of the Fifth Schedule to this Act shall have effect with respect to the preparation, adoption, and reconsideration, of an agreed syllabus of religious instruction.

(2) A local education authority shall have power 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 and, in particular, as to methods of teaching, the choice of books, and the provision of lectures for teachers.

(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 by the local education authority.

(4) A local education authority shall have regard 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 should be appointed.

This section enables the L.E.A. 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 procedure for the drafting of an agreed syllabus is given in the Fifth Schedule, but instead of the "Conference" therein mentioned ceasing to function immediately their agreed syllabus is drawn up, this section ensures, if desired, a continuing committee to make suggestions for the improvement of the syllabus as experience in its use may indicate a need, and for other points referred to above.

The whole section is governed by the words "agreed syllabus," it does not refer to other forms of religious instruction which may be given in an aided school. A local authority, under existing local government law, has the power to set up an advisory committee if it desires. This section draws the attention of the L.E.A. to the need for having regard to any *unanimous* recommendation the conference drafting the agreed syllabus may make.

The word "unanimous" does not refer to the unanimity of the individuals composing the conference but to the four distinct *groups* of persons which form the conference, i.e., the L.E.A., the teachers, the Church of England and other religious denominations.

There might not be unanimity on the part of every person, but that will not prejudice an agreed issue being reached. *If one of the groups, by a majority, dissents* from the other three, then agreement is not reached.

This ensures that everything that is called "agreed" is in fact agreed to by *all four parties.*

30. Saving as to position of teachers.—Subject as hereinafter provided, no person shall 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 school or in a voluntary school, or from being otherwise employed 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 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 or with respect to a reserved teacher in any controlled school or special agreement school.

By Section 30 the right to individual opinion on religious matters is safeguarded. The general principle is upheld that *State-made laws must not interfere with the right of an individual to his own personal views on religious questions.*

This applies to teachers and *to persons otherwise employed* in county or voluntary schools. Where a teacher has voluntarily accepted service in an aided school, or as a "reserved teacher" in a controlled or special agreement school, he may have voluntarily agreed that his personal views on

religious questions shall not differ materially from those views on religious matters which those schools represent.

Where he has not so voluntarily agreed to accept the views of religious matters (as might be inferred from an acceptance of appointment in an aided school or as a reserved teacher)

(i) a teacher shall not be *compelled* to give religious instruction to pupils in the school where he is employed; or

(ii) a teacher shall not receive any less emolument, nor be deprived of or disqualified for promotion or other advantage

by reason of the fact that he does or does not give religious instruction.

If a person has accepted service as a *reserved* teacher in a controlled school or in a special agreement school, the foundation managers or governors may require the L.E.A. to dismiss him if he does not give the religious instruction he was appointed to give. [See Section 27 (5) or Section 28 (4) above.]

If a teacher has voluntarily accepted service as a teacher in an *aided* school, if he refuses to give such instruction there, or gives it in the opinion of the managers or governors inefficiently, the managers or governors may dismiss him under Section 28 (2) above, as the dismissal would be in connection with religious instruction.

Neither attendance at religious worship, nor omission to attend such worship, nor yet his personal religious opinions, disqualify a teacher from being appointed in a county primary or county secondary school, nor from being appointed as a teacher (other than as a " reserved " teacher) in any " controlled " school, or in any " special agreement " school.

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, until the local education order for that area first comes into operation.

(2) Save as may be otherwise directed by the Minister, every county school and voluntary school which immediately before the commencement of this Part of this Act was used for providing primary education shall be managed and conducted as a primary school, every such school which was used for providing secondary education shall be managed and conducted as a secondary school, and every such school which was used for providing primary and secondary education indiscriminately shall be managed and conducted as if it were a primary school.

When Part II of this Act comes into force, the L.E.A. must prepare a " development plan " for their area and submit it to the Minister, within twelve months of the date fixed for that Part of the Act to come into force [Section 11 (1)]. When the Minister has approved the Scheme, with or without modifications, he will issue a " local education order " for the area. [Section 12 (1).]

It may be that it is not possible to carry out all the duties outlined in this Act forthwith, and this section makes some provisional arrangements to cover the period of transition from present conditions, to the statutory conditions of the 1944 Act. (See also the proviso to Section 11 (2) (a) above)

These provisions are of temporary value only, and the arrangements here sanctioned will not be continued indefinitely.

It may be that in some part of an area it has not been possible to provide in time for the division of a school and consequently pupils up to 14 (or later 15) remain with the younger pupils. In such a case, although there may be pupils, over 12, in attendance, the school will continue to be managed and conducted as a *primary* school.

(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 subsection 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 of the school.

Circumstances may differ in the conditions of schools and the Minister may give directions not quite on the lines of the previous subsection (2). The words " save as otherwise directed " refer to such exceptions. A secondary school which has a small preparatory section, and therefore might under the last subsection have to be managed and conducted as a primary school, may instead be recognised as a secondary school. [See Section 114 (3) later.]

Before making any variation from the principle underlying the general rule that as a transitional arrangement an " all age " school shall be managed and conducted as a " primary " school, the Minister must consult with the L.E.A. (and in the case of a voluntary school with the managers or governors) of the voluntary school. The L.E.A. must be consulted about all schools in their area, the managers or governors must be consulted *as well as the L.E.A.* in the case of a voluntary school.

Ad. memo. No. 19, December, 1944, deals with the legal position of existing Grant Aided Grammar Schools.

(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 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.

The general rule is that junior pupils shall be taught in primary schools and senior pupils in secondary schools, and that there shall be separate schools for junior and senior pupils, and this is the position towards which the L.E.A. must direct their efforts. Certain transitional provisions are given in this section as to the position or procedure until the " local education order " comes into operation.

It may be, however, that in some areas reorganisation might be accelerated by some special direction of the Minister, if notwithstanding subsection 11 (5), the Minister authorised special action being taken with *parts of the development plan*, without waiting for the issue under Section 12 of the local education order dealing with the statutory enforcement of the details of the whole plan.

If the L.E.A. wish to proceed with parts of their development plan *they must apply to the Minister* for such a direction concerning the acceleration of the general scheme of providing separate schools for junior and senior pupils respectively.

32. Transitional provisions as to the management and maintenance of voluntary schools.—(1) Any school which became a voluntary school by virtue of the provisions of subsection (3) of section nine of this Act shall, during the period until the question whether the school shall be a controlled school an aided school or a special agreement school is determined by an order made under this Act with respect to the school or by reason of the expiration of the time limited by this Act 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 :—

Under Subsection 9 (3) a school, recognised as a public elementary school under the former Education Acts, *which was not provided* by a L.E.A. for elementary education, becomes a voluntary school.

Section 32 includes transitional provisions for the management, etc., of such a school. During any brief period which may elapse before the question is settled, whether the school shall be recognised as (1) a controlled school, (2) a special agreement school, or (3) an aided school, *the school shall be deemed to be an aided school*, subject, however, to certain modifications as stated below, which will apply until its position as an aided school is fixed by an order.

(*a*) the provisions relating to the constitution of a body of managers or governors shall not apply, and the body of managers or governors shall be constituted in like manner as the body of managers was constituted 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 shall not apply, and the school shall be managed and conducted in like manner as it was immediately before that date :

Special provision is made here to meet the case of senior public elementary schools which will be included in the category of secondary schools along with junior technical schools and secondary schools of the grammar school type. *Until such a school is recognised definitely as a secondary school* it will not have a constitution like the former secondary schools. It will not be managed or governed in accordance with Sections 17 and 19 above, but will be managed as it was managed and conducted before *Part II* of this Act comes into operation.

Considering the case of such schools generally,

The Act by Section 17 (1) and 17 (3) (*b*) provides that *all* secondary schools shall be conducted under

(i) " instruments of government " which will prescribe the constitution of the governing body ; and
(ii) " articles of government " which will define the functions to be exercised by the L.E.A., the governing body and the head teacher respectively.

These instruments and articles of government will be made :—
(*a*) in the case of *county* schools by an order of the L.E.A. ; and
(*b*) in the case of *voluntary* schools by an order of the Minister.

Under Section 67 (1) of this Act any dispute between a L.E.A. and the governors of any secondary school with respect to the exercise of any power conferred, or the performance of any duty imposed by this Act, shall be determined by the Minister.

Subsections (1) (a) and (1) (b) of Section 32 here state that until the question of the exact status of a voluntary school is determined, the statutory provisions, in this Act, for managers of primary schools or governors of secondary schools, as above, shall not apply, but that the body of managers or governors shall be constituted *as the body of managers was constituted, before the commencement of this part of this Act.* Similarly, the new provisions in this Act concerning " *rules* " of management for primary schools, and " *articles* " of government for secondary schools as a temporary arrangement will not apply, but the school shall continue to be *managed and conducted as it was immediately before that date.*

(*c*) the school shall be maintained in like manner as it was immediately before that date, but the local education authority shall not require any alteration to be made to the school premises :
(*d*) the Minister shall not, under the powers conferred by this Act, make to the managers or governors of the school any maintenance contribution in respect of alterations or repairs to the school premises.

Until the status of the school is determined by an Order—
(i) The L.E.A. shall maintain the school *as heretofore*, but shall not *require* any alterations to be made to the school premises ; similarly
(ii) The Minister shall not be required to make any contribution to the cost of alterations or repairs undertaken during this period.

(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 from the managers or governors.

This subsection may prove useful during the period intervening between the passing of the Act and the final decision as to the type of school to

which a particular school may be allocated under the "development" plan :—

If the managers are of opinion that their school may become a "controlled" school owing to their view that they cannot undertake to provide 50 per cent. of the cost of necessary alterations, they may neglect to carry out repairs which, under the 1921 Act, *they* should carry out, if the school is to be fit for the L.E.A. to continue to maintain as efficient. Similarly, if the managers do not execute such *internal* necessary repairs but delay them in the hope that the L.E.A. will be responsible for these when the school becomes definitely recognised as an "aided" school, this clause applies.

If *after notice from the L.E.A.* that such repairs are necessary, and if the managers do not carry out their statutory duties, on appeal to the Minister, the Minister may *authorise* the L.E.A. to do the work and recover the cost for which they were liable under the 1921 Act.

Primary and Secondary Education of pupils requiring Special Educational Treatment.

33.—Education of pupils requiring special educational treatment.—(1) The Minister shall make regulations defining the several categories of pupils requiring special educational treatment and making provision as to the special methods appropriate for the education of pupils of each category.

(2) The arrangements made by a local education authority 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 appropriate for that category, 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 maintained or assisted by the local education authority.

Pupils who require "special educational treatment" have been dealt with in the past by Special Acts, as for blind children and deaf children, children who are mentally defective or epileptic, or by clauses in other Education Acts, e.g., physically defective children. These Acts and relevant clauses are now repealed and special provision therefor made in this Act.

Under this Act a more comprehensive view is taken of their needs.

Under Section 33 (1). The Minister shall make Regulations for this work :—

(i) Defining the several categories of pupils which require special educational treatment ; and

(ii) Making provision as to the special methods appropriate for the education of pupils of each category.

The L.E.A. must make arrangements to provide the special educational treatment required for each category.

(i) In cases where the disability is serious the L.E.A. should, as far as is practicable, provide for the education in special schools appropriate for that category ;

(ii) Where the disability is not so serious (e.g., minor physical or mental

defects), the L.E.A. may provide for the giving of such special education in any school maintained or assisted by the L.E.A.; or

(iii) Where the disability is serious, and yet it is not practicable to give the special educational treatment in a special school, the treatment may be given in a school maintained or assisted by the L.E.A., as for the cases of less serious disabilities.

(3) The Minister may by regulations make provision as to the requirements to be complied with by any school 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, 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 are provided in separate schools 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.

(4) The regulations made under this section 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 or will be withdrawn from attendance at such worship or instruction in accordance with the wishes of his parent.

During the Committee Stage in the House (on 9th May, 1944) the Parliamentary Secretary (Mr. Ede) stated that the Minister intended to honour specificially a pledge given earlier to arrange for an Advisory Committee to be formed. Such Committee would include not merely doctors but other persons who have practical knowledge of the day-to-day work in connection with children receiving special educational treatment. Such Committee when set up will, however, have to justify its position in the machinery of government by the advice it can offer the Minister upon problems it can tender to him and the solutions it can offer. The Minister may from time to time embody such advice, if expedient, in Regulations.

Under this subsection (3) the Minister can make Regulations which :—

(i) Fix the conditions for approval of a special school;

(ii) Specify the conditions for withdrawal of approval of a special school; and

(iii) Impose requirements as to the organisation of any special school as a primary school, or as a secondary school.

N.B.—The general rule that senior pupils should be educated in schools separate from schools for junior pupils, will not necessarily apply to pupils in attendance at Special Schools.

Section 33 (4) extends the statutory requirements for religious worship and religious instruction in ordinary primary and secondary schools to special schools, *so far as this is practicable.*

Also the right of a parent to his own personal views on religious questions is safeguarded by the sanction to withdrawal of the pupil from such religious worship or instruction *if the parent wishes this.* See also note on Subsection 7) of Section 25 above.

34.—Duty of local education authorities to ascertain what children

require special educational treatment.—(1) It shall be the duty of every local education authority to ascertain what children in their area require special educational treatment; and for the purpose of fulfilling that duty any officer of a local education authority authorised in that behalf by the authority may by notice in writing served upon the parent of any child who has attained the age of two years require him to submit the child 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; and if a parent upon whom such a notice is served fails without reasonable excuse to comply with the requirements thereof he shall be liable on summary conviction to a fine not exceeding five pounds.

Early ascertainment is essential if the L.E.A. are to provide special educational treatment for the children included in the categories referred to in the regulations made by the Minister (Section 33 (1)). As children may be admitted to a nursery school at 2 the L.E.A. have power for medical inspection of children from that age (even if a parent should object).

With this in view the L.E.A. should authorise certain of their officers to send a notice *in writing* to parents of children of 2 years of age and upwards.

Copies of records of dates of birth may be obtained from the Registrar of Births. (See Section 94 later.)

The notice will require the parent to submit the child for examination by a medical officer of the authority.

The medical officer will, after examination, give advice as to :—

(i) whether the child is suffering from any disability of mind or body; and

(ii) the extent of such disability (if any).

It would be advisable for the medical officer to make sufficiently detailed notes which may enable him to give evidence in court, if later the L.E.A. find it necessary to take proceedings in any cases.

Any parent who unreasonably refuses to submit his child to such medical examination, after having received such written notice from an authorised officer of the L.E.A., shall be liable on summary conviction to a fine not exceeding *Five Pounds.*

(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.

If a parent has not, for some reason, received any instructions to submit his child for examination by a medical officer of the authority, the parent may request the L.E.A. to *cause* his child to be so examined, the L.E.A. shall comply with the request if (in the opinion of the L.E.A.) it is not unreasonable.

If such notice has been received, and, instead of bringing the child for examination, the parent requests the L.E.A. to send the medical officer

to the place of residence of the child, it would depend upon where the residence of the child is situated, and what time of the day the parent wished the medical officer to visit, and also on the other duties of the medical officer, whether the request to the L.E.A. to *cause* the child to be examined in that way would be considered reasonable or not.

(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.

(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 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.

Subsection (3) assumes that arrangements will be made for medical examination at some place other than the residence of the parent.

The L.E.A. shall consider :—

(i) The advice given by their medical officer after the examination ;

(ii) Any reports which the L.E.A. is able to obtain from teachers or other persons with respect to the ability and aptitude of the child ;

On these the L.E.A. shall—

(iii) Decide whether the child requires special educational treatment : and if so, shall—

(iv) Give notice to the parent of their decision ; and

(v) Shall provide such treatment for the child.

If the parent should object to sending his child away from home for the necessary treatment which the L.E.A. must provide, and he cannot be persuaded by kindly showing to him, the disadvantage in the future to the child, through lack of this special educational treatment, also the benefit of its receipt, it may be necessary to issue *an attendance order* if the child be of compulsory school age.

(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 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 at primary and secondary schools.

The medical officer who made the examination shall communicate both to the L.E.A. and to the parent :—

(i) Whether the child is suffering from any disability of mind or body; and

(ii) The nature and extent of that disability (if any).

If the parent requires a certificate to show the advice given by the medical officer after examination of the child, or if the L.E.A. requires such a certificate the medical officer will issue such a certificate, but the L.E.A. will not require such certificate unless they are of opinion that this is necessary for the purpose of securing the attendance of the child at a *special* school.

By Section 8 (2) (c) special schools are included as part of the *statutory* system of education, which applies to children of compulsory school age (and in the case of special schools this extends to the age of 16). The conditions of compulsory attendance at such schools are similar to those for statutory primary or secondary schools. In the case of attendance at a residential school, no distance limit from the parents' home to the school applies, as the school is deemed to be the home of the child.

In future no child will be certified as " mentally defective " *so long as he remains within the education system.* (The certificate will refer to disability of mind or body and to the extent of that disability.)

If the child is *ineducable,* he is no longer in the category of those for whose education provision must be made. In such case the L.E.A. must notify the Mental Deficiency Committee for the area where the child resides.

In the majority of cases the Local Authority for dealing with ineducable pupils is the council which is also the L.E.A., and such cases reported to the Council would be referred to the appropriate committee to provide for the care of such. In the case, however, of County Boroughs which are represented on the Lancashire Mental Hospitals Board, this board is the Local Authority to whom they must be reported. Similarly with County Boroughs represented on the West Riding of Yorkshire Mental Hospitals Board or the North Staffordshire Mental Hospitals Board. (See Appendix for Section 34 of the Mental Deficiency Act, 1913.)

The abolition of certification formerly required for purposes of the Education and Mental Deficiency Acts is accompanied by an obligation on the part of the L.E.A. to provide special educational treatment for all types of handicapped children resident in their area. The numbers in some of the categories specified by the Minister (Section 33 (1)) may be small in some areas, and authorities should exercise their powers to combine for general or for specific purposes, so that every child may be provided for.

It is probable that the majority of the special schools will be schools already in existence, which have been provided by voluntary agencies, but they must be referred to in their development plan of any L.E.A. which proposes to send pupils thereto.

Under Section 114 (2) (b) such schools would be " *assisted* " by every L.E.A. which sends pupils in this way.

(6) Any certificate issued under the last foregoing subsection may be cancelled 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.

The inclusion of the power of the Minister to cancel a *certificate of need of special educational treatment* as well as a medical officer of the authority, gives the parent a right of appeal to the Minister against the decision of the L.E.A. to provide such treatment for his child. If the Minister is of opinion from the evidence put before him that the L.E.A. has acted unreasonably, or the medical officer of the authority has issued the certificate unnecessarily, the Minister may cancel the certificate. A medical officer of the authority also has power to cancel the certificate, if subsequent information received, or from a re-examination, or otherwise, he considers such cancellation advisable.

Upon the cancellation of the certificate the L.E.A. will cease to provide *special* educational treatment for the child, but will provide the *usual* primary or secondary education appropriate to the age, abilities and aptitude of the child.

Compulsory Attendance at Primary and Secondary Schools.

35. Compulsory school age.—In this Act the expression " compulsory school age " 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 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 :

" Compulsory school age " is here defined as " any age between 5 and 15." Later an Order in Council may make it " any age between 5 and 16." There are no exemptions for children who must attend a " special " school. *All* such must attend at 5 years of age. (Until the *Education Act, 1937* (the " Duckworth " Act), deaf children were not compelled to attend before 7).

In calculating the age of a child, Section 114 (5) must be borne in mind. This states " 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.*"

This is a more comprehensive rule than that which was first introduced by Section 9 (1) of the *Education Act, 1918.* As a rule pupils attending a secondary school did not leave before the end of a term, but in elementary schools it was customary for pupils to leave on their fourteenth birthday to enter into employment, and the teacher of the top class of a school might see his class progressively diminish in numbers as each pupil reached the age of 14. The 1918 Act included this rule "*for the avoidance of broken terms*" *in elementary schools.*

Sometimes a parent would transfer his child from an elementary school which he had been attending, and enter him at a cheap private school at the beginning of the term in which his fourteenth birthday would occur.

He would then withdraw him from this private school to enter employment on the day following his fourteenth birthday. He would be able to earn more at work than the cost of the first term's payment at the cheap school chosen. Section 114 (5) will put an end to such practices in future, as this applies to attendance at all types of school, and not elementary schools only. (See Note on Section 114 (5) later.)

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 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.

The Note on Section 5 of this Act shows one way of how Parliament may learn when the time is opportune for raising the upper limit of compulsory school age to 15, and this will apply to raising it to 16. As mentioned in the preceding note, as a rule pupils remain in attendance at a secondary school until the end of a term, but difficulties may occur in endeavouring to get them to remain until 16 years of age, when the compulsory age is only 14. When the upper limit is raised to 16 these difficulties will disappear. The L.E.A. will no longer need to deal with penalties for breach of agreement as at present. In some areas a special clause has been inserted in a Local Act providing that in claiming for breach of agreement it would not be necessary to prove damage. Yet on some occasions there have been difficulties in enforcing penalties.

N.B.—There must be a *special resolution* of one of the Houses of Parliament if the Draft Order is not to become operative. If there is no special resolution passed vetoing the draft, the Order follows the usual course of procedure for presentation to His Majesty after the 40 days is past.

36. Duty of parents to secure the education of their children.—It shall be the duty of 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.

We have here an interesting change of the law as to the duties of parents, and one which shows a change of attitude on the part of the State. The *Education Act, 1870*, in Section 74 (1) makes a reference to requiring the parents of children of school age "*to cause these children to attend school.*" A few years later the *Education Act, 1876*, stated in Section 4: "It shall be the duty of the parent of every child to cause such child *to receive elementary instruction in reading, writing and arithmetic.*"

This latter requirement has remained as the statutory definition of the parent's duty until the present time, and in many cases magistrates have themselves tried to decide, in cases brought before them, whether the child had sufficient proficiency in these elementary subjects, to show whether the parent had, or had not, fulfilled his duty.

On 20th January, 1944, the Parliamentary Secretary to the Board of Education (Mr. Ede) stated : I ask honourable members to realise that *that definition has cramped the work of education over the last 70 years.* It was the basis of the Cockerton Judgment, which held that "higher grade" schools were confined to the giving of elementary instruction in reading, writing and arithmetic, and that teaching a girl to cook and a boy to make a mortice and tenon were not elementary instruction in reading, writing and arithmetic. Yet many a boy learns more arithmetic through having to measure a mortice and tenon and *to abide by the result*, than he does through the teaching of abstract arithmetic.

The words " or otherwise " at the end of the section preserve the parent's right to give the education which he wishes his child to receive so long as it is efficient. The change is that the duty of the parent is a wider one than formerly. Instead of the former very narrow provision that it shall be efficient *elementary* education, the duty is to give *efficient full-time instruction according to the age, ability and aptitude of the child.* This may be provided even outside the State system ; but the general tenor of the Act is that this must not be a cloak for giving a child an inefficient education in an insanitary room in circumstances which make education very difficult. In Part III of the Act steps are taken to protect the children in the future against parents and teachers who sometimes have provided a kind of education in such circumstances.

37. School attendance orders.—(1) If it appears to a local education authority that the parent of any child of compulsory school age in their area is failing to perform the duty imposed on him by the last foregoing section, it shall be the duty of the authority to serve the parent a notice 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 suitable to his age, ability, and aptitude either by regular attendance at school or otherwise.

By this Subsection (1) *it is the L.E.A. that must be satisfied* by the parent that he is providing efficient full-time education for his child.

If the parent fails to satisfy the L.E.A., within fourteen days of notice being given to him, that his child is being provided with efficient *full-time* education, suitable to his age, ability and aptitude (which may be by home tuition, by attendance at an independent school, or otherwise) an attendance order will be served by the L.E.A.

If the parent cannot be found the custodian of the child might be notified (See Section 114 (1) for definition of "parent").

This subsection is applicable also in the case of irregular attendance at a school where the child may be registered. This irregular attendance would be an instance of the failure of the parent to carry out his duty to provide *full-time* efficient education.

(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 upon the parent an order in the prescribed form (hereinafter referred to as a " school attendance order ") requiring him to cause the child to become a registered pupil at a school named in the order:

Provided that before serving such an order upon a parent the authority shall, where practicable, 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, be the school named in the order.

By this subsection the L.E.A. themselves will serve a *School Attendance Order* on the parent who fails to satisfy them that the child is receiving full-time, efficient and suitable education for his child.

This obviates the necessity of the L.E.A. having " to complain to a court of summary jurisdiction with a view to obtaining an attendance order." (Cf. *Section 43 (1), Education Act, 1921.*)

The parent has the right to select, provisionally, the school his child is to be ordered to attend. The name of the school selected shall be inserted in the School Attendance Order by the L.E.A., unless the Minister directs otherwise, after an application from the L.E.A. for directions under (3) below.

N.B.—Under Section 11 of the *Education Act, 1876*, the school named in the " Attendance Order" must be a school *willing to receive him.* This was included in Sect. 44 of the *Education Act, 1921*, but there is no reference to this point in this 1944 Act.

Under former Education Acts the issue of a School Attendance Order for not providing efficient education was not a conviction. Proceedings for *not obeying the order* might result in a conviction. Similarly, proceedings for breach of byelaws might result in a conviction.

Under the present Act, similarly, as the issue of a school attendance order may be made by the L.E.A. (which is not a court of summary jurisdiction), this is not a conviction, but if the parent does not obey the order, proceedings could be taken which might result in a conviction. (Subsection (5) below.)

(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.

If the L.E.A. are of opinion that it would be inadvisable to insert in the order the name of the school *provisionally selected by the parent*, on the grounds that :—

(i) The school is unsuitable to the age, ability or aptitude of the child in question ; or

(ii) That it would involve unreasonable expense to the L.E.A. to send the child to the school named :

the L.E.A. may apply to the Minister for a direction determining the name of the school which they are to insert in the order.

(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.

Later the parent may apply :

(i) That the name of another school may be substituted for the one named in the order ; or

(ii) That the attendance order may be revoked, on the grounds that arrangements have been made for suitable efficient education to be provided *otherwise than at school.*

The L.E.A. may consider that it is inadvisable to amend the order, on the grounds named by the parent, or to revoke the order as may be desired by the parent.

If the parent be aggrieved by this refusal, he may refer the question to the Minister who will give such direction thereon as he thinks fit. The Minister may decide that the order shall continue in force, or that it shall be amended, or that it shall be revoked.

(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 unless he proves that he is causing the child to receive efficient full-time education suitable to his age, ability, and aptitude otherwise than at school.

A school attendance order can only be enforced against the person on whom the order was made. (*Hance* v. *Fairhurst* (1882), 47 J.P. 53.) In the case of a child whose father may be a sailor, frequently at sea, the

mother as custodian may be presumed to be in charge of the child, and it may be advisable to serve the order on the mother if the L.E.A. wish to enforce it.

A school attendance order may be made by the L.E.A. on the grounds that the parent is not carrying out his statutory duty regarding the education of the child, whether the failure be due to irregular attendance at a primary or secondary school at which he may be registered, or due to inefficient education *otherwise*, e.g., home tuition, or attendance at an independent school.

If the child fails to attend the school named in the order, the parent commits an offence and he may be brought before a court of summary jurisdiction *for failure to comply with the attendance order.* This differs from failure to provide efficient education for the child.

The parent may attempt to justify his action by trying to prove to the court that he is *now* providing efficient education *otherwise than at school.* The child now may have a fresh home tutor, or he may be a boarder in some other school. The court would usually consider the "*otherwise*" question, as to whether the method now suggested to them may not be allowed in place of attendance at the school named in the order, rather than trying to test the acquirements of the child.

It is generally held that where a Justice of the Peace has acted as a member of the Education Committee, or the L.E.A., *by directing a prosecution* for an offence under an Act, he is not a sufficiently disinterested person to sit as a judge in the hearing of the case.

A Justice who is a member of the Education Committee, or of the L.E.A., *but has not taken part in ordering the prosecution,* is not disqualified merely because he is a member of the L.E.A. (*Rex* v. *Lee* (1882), 9 Q.B D 394).

(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 if at any time the authority are of opinion that having regard to any change of circumstances it is expedient so to do.

If a parent is brought before the court for alleged failure to comply with a school attendance order, and he is acquitted the court may revoke the school attendance order.

This, however, will not debar the L.E.A. from issuing another attendance order if, with regard to any change of circumstances, they consider it expedient to do so (e.g., if the parent should *again*, in the opinion of the L.E.A., fail to carry out his duties).

For the Appearance of Local Authorities in Legal Proceedings, see Sect. 277 of the Local Government Act, 1933, in Appendix A.

(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 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.

Unless an attendance order should be revoked by a Court on the acquittal of a parent for failure to comply with it, the Order will, unless subsequently amended or revoked by the L.E.A., remain in force so long as the child is of compulsory school age. It is the L.E.A. which issued the order, and consequently it should be amended (if necessary) or revoked, by *them*, except as provided in Section 37 (6) preceding.

38. Additional provisions as to compulsory attendance at special schools.—(1) While the upper limit of the compulsory school age is, in relation to other children, less than sixteen a person who is a registered pupil at a special school shall nevertheless be deemed to be of compulsory school age until he attains the age of sixteen years and shall not be deemed to be over compulsory school age until he has attained that age.

The compulsory age for a child registered at a " special " school will continue to be 5 to 16, even if the compulsory age for attendance at a primary or secondary school be 5 to 15. There is one change, however, made by this Act in that under Section 114 (5) the child is deemed not to have reached that age until the end of the school term in which his sixteenth birthday occurs. A special school is a " school " and consequently is included in that definition.

(2) A child who has under arrangements made by a local education authority 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 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 thereon as he thinks fit.

If a L.E.A. has made arrangements for a child to become a registered pupil at a special school (whether the special school be situated in the area of that L.E.A. or in some other area) the child shall not be withdrawn from the school without the consent of the authority which made the arrangements.

If the parent of the child is aggrieved by that authority refusing to allow his child to be withdrawn from the special school, the parent may refer the question to the Minister.

(3) No direction given by the Minister under the last foregoing subsection or under subsection (3) or subsection (4) of the last foregoing section shall be such as to require a pupil to be a registered pupil at a special school unless either the parent consents to his attending such a school or there is in force a certificate issued by a medical officer 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.

Under Section 37 (3) and (4) the Minister may give a "direction" in the case of an application :—

(i) To substitute the name of another school in an " Attendance Order " ; or

(ii) To revoke an " Attendance Order " on the grounds that other arrangements have been made for efficient suitable education since that order was made.

Under Section 38 (2) the Minister is empowered to give a direction concerning attendance at a " special" school.

But under Section 38 (3) no such direction, given by the Minister, shall require the pupil to attend a *special* school unless either :—

(i) The parent consents to such a course ; or

(ii) There is in force a certificate of a medical officer of the L.E.A. which shows that the child is suffering from such a disability of mind or body as necessitates this, and the Minister considers, too, that the child *should* attend the special school.

39. Duty of parents to secure regular attendance of registered pupils. —(1) 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 shall be guilty of an offence against this section.

Subsection 37 (5) states that it is an offence under *that* Section if a parent fails to comply with an Attendance Order made by the L.E.A.

Here Subsection 39 (1) states that it is an offence against *this* Section if the parent does not secure *regular* attendance at the school where his child is registered.

In any case where there is an offence, the law must provide a remedy. This is generally done by the L.E.A. bringing the offending parent before a court of summary jurisdiction. (See Section 40 below for penalties if convicted thereat.)

(2) In any proceedings for an offence against this section in respect of a child who is not a boarder at the school at which he is a registered pupil, the child shall not be deemed to have failed to attend regularly at the school by reason of his absence therefrom with leave 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 from the child's home, and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding accommodation for him at or near the school or for enabling him to become a registered pupil at a school nearer to his home.

See Subsection (5) below for meaning of "walking distance."

Section 74 of the *Education Act, 1870,* in directions to School Boards when making byelaws for the enforcement of attendance at school, states:

"Any of the following reasons shall be a reasonable excuse; namely:—

(1) that the child is under efficient education in some other manner;

(2) that the child has been prevented from attending school by sickness or any unavoidable cause; or

(3) that there is no public elementary school open which the child can attend, within such distance, not exceeding three miles, measured according to the nearest road, from the residence of the child as the byelaws may prescribe."

The above reasonable excuses of the 1870 Act for non-attendance at school are included here in this 1944 Act with the modification in (3) above by references to *transport* arrangements which the L.E.A. are now to make, and to arrangements for boarding pupils at or near the school, and also that a child under 8 cannot be compelled to *walk* more than two miles.

If the reasonable excuse given is that sickness was the cause of absence, *the complaint from which the child was suffering should be stated on any medical certificate* presented to the court to substantiate the excuse pleaded. This would enable the Justices to decide whether the excuse be genuine or not.

In *Osborne v. Martin* (1927), 25 L.G.R. 532, it was held, in the case of a child who had been absent from school on certain occasions "to receive private lessons in pianoforte playing," that this was not a reasonable excuse.

As mentioned in the Note to Section 25 (4) above, when the 1870 Bill was before the House, no sanction was given to withdrawal "*from the school*" during the times devoted to religious instruction.

It was recognised, however, that there are special occasions when such withdrawal from school might be desirable, in order to allow the rights of individual parents to their own religious views, and the fact that a child is absent from school on any day exclusively set apart for religious observance by the religious body to which the parent belongs was included in the list of reasonable excuses [(2) (*b*) above].

Some of the days so set apart by the *Church of Rome* are: Circumcision (January 1st); Epiphany (January 6th); St. Patrick's Day (March 17th); Ascension Day; Corpus Christi; Assumption of our Lady (August 15th); St. Peter and St. Paul's Day; All Saints' Day (November 1st).

The *Jewish Church* sets apart certain days which include: The Feast of Purim (one day); The Passover (nine days of which the first and the last two days are obligatory); The Jewish New Year (two days); Pentecost (first two days are obligatory); Day of Atonement; Feast of Tabernacles (first two days and last two days are obligatory).

The *Church of England* generally considers Ascension Day as a day set apart for religious observance.

The special grounds of exemption, first included in the 1870 Act, and reproduced in Section 46 (4) of the 1921 Act, referred to attendance at public elementary schools only. The 1944 Act widens the scope of their application. The grounds of exemption herein refer to *all* children of compulsory school age, except as specified in subsection (3) below, whatever school they may attend. (See Note on Section 39 (4) below for pupils boarded at the school attended.)

There are, however, two additions in this section in that a child absent ***with leave*** is not deemed to have failed to attend regularly. Subsection

(5) below states who may grant "leave," and the relaxation of the three-mile distance in the case of children under 8.

(3) Where in any proceedings for an offence against this section it is proved that the child has no fixed abode, 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.

Certain variations are found necessary where the parent has no fixed abode, e.g., the two- or three-mile limit is inapplicable where the parent is engaged in a business or trade which entails travelling from place to place.

The rules for the attendance of canal boat children were formerly based upon the *Canal Boats Act, 1877* and the *Canal Boats Act, 1884*, but these Acts were repealed by the *Public Health Act, 1936*, except Section 12 of the 1877 Act, which authorises the proprietors of canal boats to establish and maintain schools.

Section 250 of the *Public Health Act, 1936*, provides for the registration of canal boats which are used as dwellings. (See Appendix A.)

Proceedings where necessary should be taken, in the first instance, by *the L.E.A. for the area where the boat is registered*, as analogous to the place of residence of the parent.

It might be pleaded as a reasonable cause for non-attendance, that attendance is impossible during the period when the boat is actually moving from place to place.

This section empowers the parent to plead that the child has attended at a school where he is a registered pupil as regularly as the nature of the trade or business of the parent permitted.

But this plea must not be abused by trying to prove that the child cannot attend except on a very few occasions.

The proviso to this subsection prevents this and states that if the parent pleads this he must prove that the child has made 200 attendances during the 12 months ending with *the date on which the proceedings were instituted* (not the date when the parent is before the court), e.g., if the child had made, say, 180 attendances in the year, before the parent received the summons, and a fortnight elapsed before the case came forward and the parent arranged for his child to put in another 20 attendances by attending a school full time for that fortnight, this would not avail to prove that an offence had not been committed during the period named.

(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.

Exemption under Section 39 (2) (*a*) above is allowed in the case of a boarder at the school at which he is registered, but *distance from the home* of the child's parent from the school does not enter into the question. When the child lives at the school the school becomes the child's home for this purpose.

(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 of the school, and the expression " walking distance " means in relation to a child who has not attained the age of eight years two miles, and in the case of any other child three miles, measured by the nearest available route.

In addition to the former statutory reasons allowed for not attending school regularly which are given in subsection (2) above, we have here the addition of the word " leave " and the reference to " walking distance."

Subsection (5) defines more clearly who can grant " leave " for absence. It must be granted by some person *authorised by the managers or governors or the proprietor* of the school to be accepted as an excuse. If the case for non-attendance is brought before the court for non-compliance with an attendance order previously issued by the L.E.A., the *authorisation* of " leave " should be produced in court.

In some cases the rules of management or the articles of government may specify who is authorised to grant occasional leave : the head teacher or the chairman of the managers or governors may be authorised to grant such *under specified conditions.*

Section 22 of the *Children and Young Persons Act, 1933* (Eighth Schedule of this 1944 Act and Appendix A) deals with " Restrictions on children taking part in entertainments."

Section 22 (3) authorises a L.E.A. to grant a licence, subject to specified conditions, for a child, not under 12, to take part in any specified entertainment or series of entertainments.

The amendment by the Eighth Schedule states that if such entertainment takes place during school hours, *the times of such entertainment* must be specified by the licence, and the granting of a licence with such times specified therein shall be deemed to be the granting of " leave " for these periods as if authorised by the managers, or governors or proprietor of the school at which the child is registered.

See also Note on Subsect. (7) of Sect. 54 of this Act for absence due to a child being *excluded* by reason of lack of cleanliness of person or clothing.

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 shall be liable on summary conviction,

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.

Section 37 (5) makes it an offence for a parent to fail to comply with a school attendance order made by the L.E.A. which may have been issued because the parent failed to provide efficient education for his child otherwise than at a school; unless the parent proves that he is causing his child to receive efficient education otherwise than as ordered by the " school attendance order."

Section 39 makes it an offence for a parent who fails to secure *regular* attendance of his child at the school at which he is registered.

The maximum penalty under the 1870 Act was five shillings, on conviction. Later the maximum penalty was increased to 20 shillings.

These smaller penalties were frequently ineffective, e.g., in an industrial area a child might earn more in a week than would pay the fine any time it was inflicted.

Under this 1944 Act the penalties are greatly increased. The maximum penalty of a fine of ten pounds *and* a month's imprisonment, on a third or subsequent offence, should prove effective even in the case of a specially recalcitrant parent. *Imprisonment* may be ordered where the justices are of opinion that the parent is guilty of *contempt of court* in refusing to obey an order of the court.

For offences subsequent to the first, proofs of a previous conviction may be provided by the production of the minute book of the court. (*London School Board* v. *Harvey* (1879), 4 Q.B.D. 451.)

(2) It shall be the duty of the local education authority 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 imposed upon a parent by this Act to cause his child to receive efficient full-time education suitable to his age, ability, and aptitude, and no such proceedings shall be instituted except by or on behalf of a local education authority.

Two points are dealt with in this subsection :—

(i) It is the *duty* of the L.E.A. to institute proceedings; and

(ii) No such proceedings may be instituted except by or on behalf of the L.E.A.

In the majority of cases the L.E.A. (the county or county borough council) will no doubt *refer* their powers in this connection to their Education Committee or to the Divisional Executives, who in turn may *authorise* their chief education officer and certain specified members of his staff to take action. It may be necessary to produce the authorisation in court. The present customary procedure is for two members of the Education Committee to authorise proceedings.

See Note on Section 37 (5) as to a member of the L.E.A. or of its Education Committee sitting on the Bench when the case comes forward.

(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 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 were 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 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.

The *parent* of a child in respect of whom an offence, as defined in Sections 37 and 39, is committed, will be dealt with in an ordinary court of summary jurisdiction, while a *child* or young person can only be brought before a juvenile court under the *Children and Young Persons Acts, 1933 to 1938.*

During the proceedings against the parent, the magistrates may come to the conclusion that the child in question should be brought before a court. Here the court of summary jurisdiction, before whom the parent has appeared, is authorised to direct that the authority responsible for bringing the case forward should have the child brought before a juvenile court. The juvenile court may, on dealing with the child, if satisfied that such a course is necessary, *in order to secure regular attendance*, make an order which Section 62 of the *Children and Young Persons Act, 1933*, authorises them to make in the case of a child "in need of care and protection."

A juvenile court may in such a case :—

(*a*) Order the child to be sent to an approved school ; or

(*b*) Commit him to the care of any fit person *who is willing to undertake the care of him* ; or

(*c*) Order his parent or guardian to enter into a recognisance to exercise proper care and guardianship ; or

(*d*) Without, or in addition to, making any order under (*b*) and (*c*) above, make an order placing him, for a period not exceeding three years, under the supervision of a probation officer, or some other person appointed by the court for the purpose.

(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 such direction is necessary for the purpose aforesaid.

(5) For the purposes 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."

In the House of Lords during the Committee stage of the Bill, the Lord Chancellor stated when Section 40 was under consideration :—

"The law of school attendance is enforced in two ways. In the first place there are byelaws, the main purpose of which is to bring parents before the ordinary magistrates' court, and if it is proved that they have failed regularly to send the child to school to impose a penalty. In that case the ordinary magistrates' court deals with school attendance from the point of view of the parent who has broken the law.

There is a second provision in the law which deals with the situation arising from improper attendance from the point of view of the child.

A juvenile court in suitable cases considers the circumstances in which the child is living and whether it is right to send the child to a different school, an approved school, or to deal with the position in some other way.

One set of provisions, therefore, applies to ordinary magistrates' courts in which penalties may be imposed, and the other provisions are definitely in the interests of the child."

"This section will secure that while ordinary magistrates' courts will impose penalties on parents in proper cases—penalties which will be more severe than heretofore—the interests of the child will be looked after as before by the juvenile courts."

The point was raised as to the effect of the words "whether or not the parent is convicted." It was stated then, that in the past the work done in the juvenile tribunals has been done on the whole with sympathy and understanding, but if the position arose that the parent when charged was found not guilty for one of the reasons which he is entitled to rely upon under Section 40: the child may be innocent, yet these words might make it possible for the child to be taken away from the parents as if the child were in need of care and protection under the Children and Young Persons Act.

The Lord Chancellor thought the phrase referred to the case where the parent was brought before the court and for good reasons the magistrates have decided to deal with the parent by some method short of conviction, which may be under the Probation Act.

The future education of the child would then arise in the juvenile court. It does not, of course, follow that the juvenile court would do anything. They might be strongly moved by the fact that the parent was not convicted, but in any case this court could be trusted to do what was best *in the interests of the child.*

A person who has been convicted by a magistrate's court has the right of appeal to Quarter Sessions provided that :—

(*a*) The appeal is in writing and is delivered to the clerk to the magistrates, *and* to the L.E.A. who, or by whose authority the prosecution was instituted, *within 14 days*, and

(*b*) He enters into recognisances before the magistrates *within 21 days* and gives security.

In some cases parents have endeavoured to obtain privileges for a child by making him a " ward of court," by making a settlement of a certain amount in favour of the child and arranging for the Chancery Division of the High Court to execute the trusts. In such a case a Chancery judge will be entitled to be consulted in matters connected with the welfare of a child, e.g., if a Juvenile Court should " commit the child to the care of a fit person " under Section 40 of the *Education Act, 1944*, in accordance with Section 62 of the *Children and Young Persons Act, 1933.*

Further Education.

41. General duties of local education authorities with respect to further education.—Subject as hereinafter provided, it shall be the duty of every local education authority to secure the provision for their area of adequate facilities for further education, that is to say :—

(*a*) full-time and part-time education for persons over compulsory school age ; and

(*b*) leisure-time occupation, 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 or at county colleges.

The *Elementary Education Act, 1870*, authorised School Boards to provide elementary education for children of the labouring classes. *The Education Act, 1902*, authorised Local Education Authorities to provide opportunities for education other than elementary, " Higher Education " as it was termed, as well as elementary, but there was no compulsion to do this. They were to " take such steps as seem *to them* desirable." [Section 2 (1).]

In the majority of cases such steps dealt chiefly with the establishment of secondary schools of the grammar school type, and in some cases a little help for technical colleges and with a few university scholarships for older pupils.

Here we have a *definite duty* laid upon the L.E.A.s to secure the provision of facilities in their area for further education. This section provides a good foundation on which arrangements for adult education may be built up, which may be increasingly needed when the members of H.M. Forces are demobilised.

This section indicates what is included in the term " Further Education."

" Further education " is a term relating to persons *over compulsory school age.* It includes

(*a*) Full-time and part-time *education*; and

(*b*) Leisure time *occupation* for persons able and *willing* to profit by the facilities provided.

This links up with Section 84, with the opportunities that may be provided at the universities and university colleges for people who desire higher ranges of education. It affords an opportunity for further education for pursuing the higher ranges of training in professional studies.

This indicates a wide range of educational activities, but the L.E.A. may only provide facilities for such in accordance with a definite scheme of further education or at county colleges. Any form of technical, commercial, art training or leisure time occupation which the authority wish to provide must be included in their scheme for further education. *They are not empowered to provide such otherwise.*

In Parliament the term " Higher Education " was suggested as an alternative to " Further Education," but it was pointed out the higher education included work at the universities, which was not a function of the L.E.A.

42. Schemes of further education.—(1) Every local education authority shall, at such times and in such form as the Minister may direct, prepare and submit to the Minister schemes of further education 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, as may be specified in the direction.

The Minister will prescribe the "*form*" in which a *scheme of further education* must be drawn up, and also the times within which it must be prepared by the L.E.A. and submitted to the Minister for approval.

The "*Scheme* for Further Education" will not relate to the duties of the L.E.A. in connection with county colleges. That work will be the subject of a *plan* referred to in Section 43 later.

The scheme for further education must give particulars of the provision the L.E.A. propose to make for carrying out the duties which may be specified in the directions given by the Minister.

The schemes for different areas may not all be of a uniform pattern; each area may require special arrangements. A scheme for an urban area will probably differ from a scheme for a rural area.

Vocational and technical training is provided for by the *Disabled Persons Employment Act, 1944.* See Appendix A. Under Section 2 (2) of that Act it is possible that the training of blind persons may be delegated to L.E.A.s. Further education, academic or otherwise, for such disabled persons may be included in the scheme in Section 42 above.

(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 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.

The L.E.A. must make their scheme and submit it to the Minister for approval. If the Minister considers certain modifications expedient, he will consult the L.E.A. on the changes suggested before giving approval to the modified scheme.

The L.E.A. must take such measures as the Minister directs for carrying out the details of the scheme. Here again consultation with the L.E.A. is brought into the Act so ensuring an effective partnership between the central and local authorities. In this section there are new and definite powers to deal with technical education for the adult population of the country and for the training of a supply of expert technologists such as the future prosperity of the country will necessitate.

In the scheme the work necessary for the industries of the country must be considered when dealing with the training of those who will take part in the industrial (including agricultural) development. (See the Notes on Section 2 above for references to agricultural education.)

One of the points to be borne in mind in providing for technical education is that technical schools and colleges require not only considerable equipment but also large laboratories, and that such schools or colleges require a relatively larger income than other educational institutions because of the expense of the materials they use. Further, it must be borne in mind that an institute or college which was considered well equipped, say 30 years ago, is not necessarily well equipped now.

Many who as members of H.M. Forces, when demobilised, may desire opportunities to pursue the interests which they have acquired when training for mechanical warfare, and resources for this should be provided. (See also Note on *Weston* v. *London County Council*, [1941] K.B. 609, following Section 44 (2) later.)

(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.

This subsection enables further changes to be made in connection with schemes for further education.

It provides for modification, supplementation or replacement, but in all cases suggestions for changes must be prepared, and submitted by the L.E.A., and approved by the Minister before they can be acted upon.

The Minister may give "directions" to bring the approved changes into operation, also stating the times when they become operative.

(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.

In order to prevent overlapping, or duplication, of work being included in the scheme of the L.E.A. with analogous work in the area, work which is being undertaken by a university or by some other educational association (e.g., Workers' Educational Association), the L.E.A. must take into account such work and must consult with these bodies and also with L.E.A.s for adjacent areas before finally issuing their scheme.

The scheme may arrange for the co-operation of such bodies which will enable bodies interested in areas to get together. There is outlined here the possibilities of the correlation of the work of local education authorities.

The *co-operation* of the L.E.A. (or L.E.A.s) with voluntary agencies such as those for the technical training of blind or deaf or other handicapped persons is here possible, and if the Minister approved this in the scheme it would be possible for the L.E.A.s to make grants for the establishment or enlargement of, or for assisting in the maintenance of, such residential or other institutions.

Special technical training for agricultural work in farm institutes or agricultural colleges in co-operation with the Ministry of Agriculture and Fisheries, or the training of nurses in voluntary hospitals as well as in State hospitals for mental or other cases may be included in the scheme.

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, it shall be the duty of every local education authority to establish and maintain 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.

The *Education Act, 1918*, outlined a scheme for the compulsory education of young persons up to the age of 18 in " continuation schools."

A Circular of the Board of Education (1086) dated 18th December, 1918, set out the Report of a committee appointed by the Board to advise as to the *buildings* which may be required for compulsory " continuation schools."

Also a Circular, 1102, was issued on the 4th April, 1919, being a memorandum on the *staffing* of continuation schools, with an Appendix containing suggestions for the *curriculum* in such schools from 14 to 16, and from 16 to 18.

In spite of these preparations, for various reasons, continuation schools failed to develop, except in a few places, and some of these so founded (e.g., in London) had to be discontinued.

Under the present Act the title of the proposed schools is changed from " continuation schools " to " county colleges," a name which may be more attractive to the young people who will be in attendance. They will not look upon attendance at a " college " as merely going back to school again.

These colleges must be established and maintained by the L.E.A. *on and after some date to be fixed by His Majesty by an Order in Council,* but this date will not be later than three years after the date of commencement of this part of this Act, i.e., *not later than three years after the compulsory school age has been raised to 15.*

If under Section 108 it should be necessary, by order, to postpone the raising of the age to 15 temporarily, the date will be *not later than three years after the expiry of such order.* (See Note on Section 108 later).

(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 every local education authority to estimate the immediate and prospective needs of their area 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 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.

As soon after 1st April, 1945 (or such later date as the Minister may fix) the Minister will direct the L.E.A. to estimate the immediate and *prospective* needs of their area with respect to county colleges.

The L.E.A. must take into consideration not only *present* needs, but

(i) The needs of their area when the termination of the compulsory school age is raised to 16;

(ii) The general trend of the birth-rate, and the probable numbers of young people in the future who must attend thereat; also

(iii) Any other similar arrangements already in existence, or likely to be developed, in their area (e.g., works schools).

[For (ii) see *Current Trend of Population in Great Britain,* H.M. Stationery Office, 2d.]

The L.E.A. must then prepare a " plan " showing the provision which it is proposed to make to meet these needs, and to give such particulars of the colleges to be established as the Minister may specify in any of the directions given by him both as regards the form and also the contents of the " plan."

The " plan " must, after preparation, be submitted to the Minister for approval before it can be acted upon.

An ordnance survey map, with the positions of the proposed colleges marked thereon, would be of material assistance in showing the distribution of these institutions : a 1 inch to the mile or a ½ inch to the mile would be a suitable scale map to use for larger areas, while a 6 inches to the mile map would be more appropriate for a smaller urban area.

(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 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 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.

(4) The Minister may make regulations as to the maintenance government and conduct of county colleges and as to the further education to be given therein.

The Minister shall:—

(*a*) consider the plan submitted by the L.E.A. for their area;

(*b*) consult with the L.E.A. on the contents of the plan; and

(*c*) make an order for the area of the L.E.A. based on the particulars considered.

The order will:—

(i) specify the colleges which it will be the duty of the L.E.A. to maintain; and

(ii) require the L.E.A. to make such provision for *boarding accommodation* as the Minister considers expedient.

Boarding accommodation may be specially necessary for young people resident in scattered rural areas, where a certain amount of continuous attendance at a county college may be more practicable than attendance on one day (or two half-days) per week, which is the type to be adopted generally for urban areas. (It is in connection with this that farm institutes referred to in the Notes on Section 2 above may prove useful.)

The "order" will continue to regulate the duties of the L.E.A. of the area to which it relates until amended, with the possibility of further amendments being considered expedient.

The Minister must consult with the L.E.A. before he issues the order for the area. Similarly, the Minister must consult with the L.E.A. before amending the order.

The Minister may make regulations under Section 43 of this Act to deal with:—

(*a*) maintenance of county colleges;

(*b*) government and conduct of county colleges; and

(*c*) with the further education to be given therein.

Also the Minister may make regulations under Section 78 (1) of the *Unemployment Insurance Act, 1935*, for attendance of *unemployed young persons* at approved courses.

See Appendix A for Section 78 (1) of the *Unemployment Insurance Act, 1935*, and the Ninth Schedule, Part II, of the 1944 Act for particulars of these latter regulations.

These *unemployed* young persons may attend either a county college or a training course provided by the Assistance Board under the *Unemployment Act, 1934*.

44. Duty to attend county colleges in accordance with college attendance notices.—(1) This section shall come into operation 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.

(2) It shall be the duty of the local education authority to serve upon every young person residing in their area who is not exempt from compulsory attendance for further education a notice (hereinafter referred to as a " college attendance notice ") directing him to attend at a county college, 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.

When an Order in Council has been promulgated, under Section 43 the Minister will issue an order, as soon as practicable thereafter, specifying the date when compulsory attendance at the county colleges will come into operation.

The L.E.A. will issue a " college attendance notice " to every young person residing in their area who is not exempt from attendance at one of the colleges. The date fixed by the college attendance notice for each young person will depend to some extent upon the date of the end of that *school term* in which his fifteenth (later sixteenth) birthday occurs.

It will then be the duty of every young person who has received a " college attendance notice " to attend at the college named therein, and at the hours directed.

In *Weston* v. *London C.C.*, [1941] K.B. 609, Mr. Weston was a pupil at a L.C.C. Technical Institute, receiving instruction in the work of a woodcutting machinist and he received injuries to his hand from a machine he was working. He claimed that the Council had been guilty of negligence in not fencing the machine as required under the Factories Act, 1937. Mr. Justice Wrottesley ruled that a *Technical Institute is not a Factory*, and the Factories Act was inapplicable thereto, and gave judgment in favour of the London County Council.

(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 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 sub-

sequent year the period of twelve months beginning immediately after the expiration of the last preceding year:

The minimum period of attendance of a young person must be specified in the college attendance notice.

The young person must attend not less than—

(*a*) one whole day or two half-days, in each of 44 weeks in every year, while he remains a young person; or in special cases:

(*b*) one continuous period of eight weeks, or two continuous periods of four weeks, in every such year.

This latter type of attendance *may* necessitate boarding arrangements. (See also Section 50 later.)

The "year" referred to in the college attendance notice need not be the calendar year, but a period of 12 months beginning with the first day on which the "*college attendance notice*" *instructs him to attend the college.*

The second and subsequent years follow on successively as the preceding year terminates. If the college attendance notice specifies, say the 1st April, as the commencing date for the particular young person, then each succeeding year will commence on that date for him.

Provided that in respect of the year in which the young person attains the age of eighteen the requirements specified in the notice shall be reduced 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.

Under Section 114 (5) a young person does not attain the age of 18 until *the end of the term in which his eighteenth birthday occurs.* If, say, there should be four terms in the college year, a young person whose birthday occurs in the *first* term of the college year, should attend not less than 11 days (or 22 half-days) in the last year of compulsory attendance, or on 33 days (or 66 half-days) in this last year, if his birthday occurs in the *third* term of his last year, or such other number of attendances as the L.E.A. may consider expedient. (See Note on Section 44 (4) below.)

(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, 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.

Some of the young people may be engaged in work which might preclude them from being able to attend the college at the ordinary times it is open. Some may be engaged in agricultural operations, others in occupations necessitating night work, or some may reside a considerable distance from the college. Experience will show what "*other circumstances*" may militate against attendance in accordance with Section 44 (3) (*a*) above.

See Appendix A for sections of the *Baking Industry* (*Hours of Work*) *Act, 1938.*

In such cases, if, on receiving his college attendance notice, the young person points out to the L.E.A. any special circumstances, or special employment in which he is engaged, *the L.E.A. may obtain his consent* to some alternative course which might be made available for him.

The college attendance notice must in such cases arrange for not less than 330 hours in each year of compulsory attendance, with a proportionate reduction during the year in which he attains the age of 18.

In a three-term college year the young person must attend not less than 110 hours in the year in which he becomes 18, if his birthday occurs during the first college term, or 220 hours if his birthday occurs during the second term.

In *Hann* v. *Plymouth Corporation* (1910), 9 L.G.R. 61, it was decided that "a school term does not include a holiday following the term." Consequently, whether attendance is under Section 42 (3) (*a*) or under Section 42 (3) (*b*), if the eighteenth birthday occurs *during a college holiday between two terms*, it will not be compulsory for the young person to resume attendance when the next college term commences, although he may voluntarily return. But he will be at liberty to leave at any time during that or any subsequent term (unless under special agreement *with the college* to attend to end of term).

(5) Except where continuous attendance is required, no college attendance notice shall require 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.

Compulsory attendance under Section 44 (3) (*a*) will not apply:—
(i) To attendance on a Sunday;

(ii) To attendance on any day, or part of a day, *exclusively* set apart for religious observance by the religious body to which he belongs. (See Note on Section 39 (2) (*b*) above);

(iii) To attendance on any holiday or half-holiday to which by enactment or agreement he may be entitled, in connection with his type of employment (e.g., a *bank* clerk need not attend on a Bank Holiday);

(iv) to attendance on any holiday or half-holiday customary in his employment; nor

(v) *Between the hours of six in the evening and half past eight in the morning.* (Attendance at evening classes will not count towards the minimum *statutory* requirements.)

Attendance at evening classes will be voluntary and supplementary to the day attendances specified in the college attendance notice.

If, however, any young person should be employed on night duty or be otherwise employed at abnormal times, the "college attendance notice" may substitute other times for the hours specified in (v) above, *with the consent of the young person concerned.*

See Appendix A for *Baking Industry* (*Hours of Work*) *Act, 1938.*

(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.

The "college attendance notice" must specify, *in sufficient detail*, all particulars necessary to ensure that a young person cannot plead any misunderstanding of the notice, if he should fail to comply therewith.

Amendments of the notice may be made, as occasion may require, either by:—

(i) The L.E.A. who served the notice; or

(ii) The L.E.A. of any other area where he may for the time reside.

There may be an amendment necessary to the specified days, times, or periods of attendance on account of a change of residence of a young person. The college in the area in which he for the time being resides may have different days or times from the college in the area from which he received the attendance notice. This subsection provides for such amendment of the notice by the authority for either the area which issued the notice or the authority in whose area his change of residence has taken him.

(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 his parent, may express, to the circumstances of his employment or prospective employment, and to any representations that may be made to the authority by his employer or any person proposing to employ him.

The requirements of the L.E.A. must not be too arbitrarily fixed in the college attendance notice, but the L.E.A. *must have regard as far as practicable* :—

(i) To any preference the young person may express ;
(ii) To the circumstances of his employment, or prospective employment ;
(iii) To any representations made to the L.E.A. by his employer or prospective employer ; and
(iv) If the young person be under 16 years of age, to any preference as to employment or prospective employment, *the parent* may express.

(8) The following persons shall be exempt from compulsory attendance for further education, that is to say—

(*a*) any person who is in full time attendance at any school or other educational institution (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 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 or section one hundred and sixteen of this Act, the duties of local education authorities do not relate ;
(*f*) any person who attained the age of fifteen years before the date on which this section comes into operation, not being a person who immediately before that date was required to attend a continuation school under the provisions of the Education Act, 1921.

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 who shall give such direction thereon as he thinks fit.

In this subsection we have a list of exemptions allowed from compulsory attendance at a county college.

(i) Exemption of young people between 15 (or later 16) and 18 who are in *full-time* attendance at a secondary school, at a technical school or college, a commercial school or college, or an agricultural college, which is approved by the L.E.A. or by the Minister, or at any similar institution, approved in like manner, may be granted under (*a*) above.

(ii) Exemption of young persons in attendance at a trade school or at a *works school* established by his or other employers could be claimed under (*b*) above :—

Provided that the L.E.A. are satisfied :

(*a*) that the young person is receiving suitable and efficient instruction ; and

(*b*) that the times attended are equivalent to 330 hours' instruction in a period of 12 months.

The attendances must be daytime attendances, during the hours of ordinary work. Exemption could not be allowed on account of evening class attendance. Attendances at evening classes would be, as mentioned above, *supplementary to the statutory attendances* here in given.

(iii) Any young person who attended a course of instruction in a school or other course *which exempted him* from attendance at a county college will not be required to attend a county college for the few remaining months between the age of 17 years and 8 months and the end of the term when he reaches the age of 18 if he should cease to attend the educational institution which exempted him before. E.g., a young person who leaves a secondary school on attaining the age of 17 years and 6 months must attend a county college, but if he does not leave the school until he attains the age of 17 years and 8 months then he will be exempted from attendance at the college.

> The *Unemployment Insurance Act, 1935*, gives the Minister power to require the attendance of young persons under 18 (seeking employment) to attend courses of instruction specially provided, as one condition of receiving unemployment benefit. See Eighth Schedule for definition of "authorised course."

(iv) A young person proposing to enter, or who has entered, *the mercantile marine* or *the seafishing industry* will be exempted from attendance at a county college, if the Minister approves the course of training therefor, which the young person has completed, or is undergoing.

(v) Young persons in the service of the Crown are exempted under Section 115 of this Act from attendance at a county college. [See Note on that section.]

(vi) Similarly, young persons of unsound minds, or ineducable persons who have been reported to the Mental Deficiency Authority, are exempt under Section 116 of this Act, as well as persons detained in pursuance of an order made by a court.

This section of the Act is not retrospective and arrangements are made for those, who attained the age of 15 years before the date of this section coming into operation, to be exempted from attendance, *unless* such young person is at that date required to attend a continuation school established under Section 10 of the Education Act, 1918 (later Section 75 *et seq.* of the Education Act, 1921). A young person who ***compulsorily*** attends

such a continuation school, even if he should be 15 before the date mentioned above, must continue his attendance thereat, or attend a county college. Several such classes were commenced under the 1918 Act, in various parts of the country, but only the classes at Rugby are remaining, and attendance thereat is compulsory up to 16. There is, however, nothing in this temporary exemption to prevent voluntary attendance.

If the L.E.A. are satisfied that a young person is not receiving suitable and efficient instruction at a works school, a commercial college or other educational institution he may be attending, or is not receiving such *during the usual working hours*, for a period equivalent to 330 hours per year, the L.E.A. may rule that that young person is not exempted under clause (*b*) above.

If the young person be aggrieved by this decision, he may refer the question to the Minister, who will decide whether the young person may continue his present course of education (modified as the Minister may decide) and be exempt; or whether the young person *must* obey the notice of the L.E.A. and attend a county college.

(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 unless he proves 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.

Section 44 (9) makes it *an offence* against Section 44 for a young person to fail to comply with any requirement of the notice with which he has been served.

If the young person is brought before a court of summary jurisdiction for failing to comply with the requirements, at some specified time, he will be found guilty of such offence unless he can prove:—

(i) That he was exempt from compulsory attendance at the period or time named by the L.E.A.; or

(ii) That sickness or other unavoidable cause prevented his compliance therewith; in the case of sickness being the claim of exemption from guilt, this should as a rule be proved by a medical certificate concerning the period or times in question [see Note *re* medical certificates following Section 39 (2)]; or

(iii) That the requirement of the attendance notice was not in accordance with the statutory requirements.

45. Administrative provisions for securing attendance at county colleges.—(1) For the purpose of facilitating the execution by local education authorities of their functions under the last foregoing section the following provisions shall, on and after the date on which that section comes into operation, have effect, that is to say:—

(*a*) every young person who is not exempt from compulsory attendance

for further education shall at all times keep the local education authority in whose area he resides informed of his proper address;

(*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 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.

In order that the L.E.A. may fulfil the duties placed upon them, it is essential that they must have, and must keep some record of, the *address* or place of residence of each young person in their area. To assist the L.E.A. in this it is here made a statutory duty for each young person to keep the L.E.A. informed of his proper address *at all times*. Each employer of a young person (except where the young person is only employed casually) must notify the L.E.A. of the date when the young person enters his employment and the date when he leaves him.

The employer must also notify the L.E.A. of any change of address of himself, and if known, of the address of the young person during the continuance of the employment.

Failure to comply with the above requirements constitutes an offence against this section. (See Section 46 for penalties to which those so guilty are liable.)

(2) The local education authority by whom a college attendance notice 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.

A copy of the college attendance notice *must be served on an employer* who notifies the L.E.A. that the young person is employed by him, so that the employer cannot plead ignorance of the times and dates, etc., for which the young person has been served with notice to attend the college.

(3) The Minister may by regulations 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 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.

The Minister may make *Regulations* for the purpose of facilitating the administration by local authorities of the statutory provisions regarding attendance at county colleges. These may include :—

(i) The form of college attendance notices ;
(ii) Regulations for consultation with, and the exchange of information between, different local authorities ;
(iii) Regulations as to the issue of certificates of exemption under Section 44 (8) of this Act ; and
(iv) Regulations generally to facilitate administration by local authorities of the provisions of this Part of this Act as to attendance at county colleges.

(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.

As most of the young people concerned will be in employment, or seeking employment, and be insured, the Ministry of Labour will have some records of, or connection with, these young people and may be able to assist the L.E.A. by giving information. Similarly, the L.E.A. may be able to assist the local offices of the Ministry of Labour.

The Minister of Education will not only set forth Regulations for consultation and exchange of information between local education authorities, as under Section 45 (3) above, but under this subsection will issue " instructions " for consultation and exchange of information between the education authorities and the local offices of the Ministry of Labour.

The Minister of Labour will issue similar instructions to his officers.

(5) Any certificate of exemption in the prescribed form 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.

Under Section 45 (3) the Minister may make regulations as to the issue of exemption certificates. These regulations may prescribe " the form " and the " manner of authentication " thereof.

Section 95 (2) of this Act may be consulted as to the acceptance of documents as evidence in legal proceedings, as also Section 3 of this Act for the legal acceptance of documents, etc., of the Minister.

46. Enforcement of attendance at county colleges.—(1) Any person guilty of an offence against either of the last two foregoing sections shall be liable on summary conviction, 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.

The penalties for omission to comply with the conditions of compulsory attendance at county colleges, as given in Sections 44 and 45 above, are similar to those given in Section 40 (1) above for failure to comply with an attendance order, or to secure regular attendance at a primary or at a secondary school.

On first offence, a fine not exceeding £1;
On second offence, a fine not exceeding £5;
On a third (or subsequent offence), a fine not exceeding £10, or imprisonment for a term not exceeding a month, or *both* a fine *and* imprisonment.

(See Note on Section 40 for proofs of previous convictions. Also see Note on Section 120 (2) *re* imprisonment not being allowed in certain cases.)

(2) It shall be the duty of the local education authority in whose area the young person 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.

Proceedings should be taken *only* by, or on behalf of, a L.E.A. In the case of offences under Sections 44 or 45, where such proceedings are considered expedient, these should be taken by *the L.E.A. of the area where the young person is resident.*

The proceedings may be taken for :—

(i) Failure to comply with the requirements of the college attendance notice, Section 44 (9); or
(ii) Failure to keep the L.E.A. informed of his proper address, Section 45 (1) (*a*), or
(iii) Failure of the *employer* to notify the L.E.A. of employment or discontinuance of employment of the young person; also failure to inform the L.E.A. of any change of address of the employer (and of the young person, if known) during the employment.

(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.

The penalty on summary conviction for giving false information in connection with proceedings under Section 44 or Section 45, is :—

(i) A fine not exceeding £20; or
(ii) Imprisonment for a term not exceeding three months; or
(iii) Both such fine *and* imprisonment.

This applies :—

(i) If the false statement is made in any material particular, ***knowing*** it to be false; or

(ii) if made *recklessly* (i.e., without troubling to find out whether it be true or false).

(4) Without prejudice to the provisions of any enactment or rule of law relating to the aiding and abetting of offences, if the parent of a young person or any person by whom a young person is employed or the servant or agent of any such person has conduced to 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 and punishable accordingly.

Persons who may have *conduced to* any offence under Section 44 or Section 45, or who may have *connived at* such offence, are guilty of the offence committed and are punishable accordingly.

This may apply to :—

(i) The parent of the young person concerned ; or

(ii) The person by whom the young person is employed ; or

(iii) The servant or agent of the employer.

This is independent of whether or not the young person has been proceeded against or convicted.

If the L.E.A. are really convinced that the offence was due to the action of the persons above named, and that the young person himself was not to blame, proceedings under this subsection might be taken against one or more of them.

In *Cunnington* v. *Cunnington* (1859), 28 L.J. (P. and M.) 102, the Judge said : " In accordance with the ordinary meaning of the word 'conduce' I think what has '*conduced to*' an effect must in some sense have caused it or contributed to it."

In *Gipps* v. *Gipps* (1865), 11 H.L.Cas.14., it was stated : "*Connive at*" seems to imply something less than contributing to the failure, it has in it the idea of being an accessory to the failure before it occurred : a wilful refusal to see ; an affecting not to see ; acquiescence in ; or wilfully abstaining from taking steps to prevent the failure.

47. Interim provisions as to further education.—Until the date upon which a scheme of further education is first approved by the Minister for the area of a local education authority under the foregoing provisions of this Part of this Act, the authority shall, unless the Minister otherwise directs, continue to maintain or assist any school or other educational institution which, immediately before the date of the commencement of this Part of this Act was maintained or assisted by them or by the council of any county district within their area, under the powers conferred by section seventy of the Education Act, 1921, not being a school or institution which under this Act is maintained or assisted as a secondary school, and may, in accordance with arrangements approved by the Minister, provide such additional facilities for further education, other than

education at county colleges, as appear to the authority to be expedient for meeting the needs of their area.

Under Section 70 of the *Education Act, 1921*, the L.E.A. for higher education might take such steps as seemed to them desirable to supply or *aid the supply* of higher education.

Also the council of any non-county borough or urban district (acting as a L.E.A. for elementary education only) might spend such sums as they thought fit, not exceeding the amount of a 1d. rate, in *supplying* or *aiding the supply* of higher education.

N.B.—Sect. 75 of the *Local Government Act, 1929*, increased this authorised rate of 1d. by 33⅓ per cent. from 1st October, 1929.

Various educational institutions, and educational associations other than secondary schools, were assisted under these powers.

Under this [1944] Act, there may be an interval between the coming into operation of Part II of this Act, and the approval of a scheme or an Order in Council, bringing into operation the sections dealing with further education and county colleges.

Section 47 includes interim provisions authorising temporarily the *continuance by the new L.E.A. of such aid*, as was formerly given by the council of a county or a county borough, *or by a county district*.

In addition to continuing former aid, unless the Minister directs otherwise, the L.E.A. may, with the approval of the Minister, *provide additional facilities* for further education during the interim period.

Supplementary Provisions as to Primary, Secondary and Further Education.

Ancillary Services.

48. Medical inspection and treatment of pupils.—(1) It shall be 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 every local education authority shall have power to provide for such inspection of senior pupils in attendance at any other educational establishment maintained by them.

(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 of a local education authority authorised in that behalf by the authority may require the parent 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 to a fine not exceeding five pounds.

(See Note to Section 79 later.)

The duty of the L.E.A. for medical inspection of children in attendance at public elementary schools was first imposed under the *Education (Administrative Provisions) Act, 1907*, as a result of inquiries following the discovery during the Boer war that a large proportion of volunteers for service abroad had been found unfit for military service on medical grounds.

The *duty* now includes the medical inspection of pupils in attendance at *any* school or county college maintained by the L.E.A., not public elementary schools only. Further, the L.E.A. have the *power* to provide for the medical inspection of senior pupils (i.e., who are 12 but not over 19) in attendance at any other educational establishment maintained by them. This last-mentioned duty will enable these "senior pupils" in technical schools or colleges to receive the benefits of medical inspection and treatment, as well as pupils in primary and secondary schools. (See Section 114, for definition of school.)

Under Section 11 of the *Ministry of Health Act, 1919*, the powers and duties of the Board of Education under the 1907 Act were transferred to the Minister of Health, but a working arrangement was made that the Board of Education should continue to do this work, with the authority of the Minister of Health, *and subject to his control*, in order that there might be continuous and effective co-operation between the two departments. (See Section 79 for co-operative arrangements and Section 100 (2) later, for grants in connection with this work.)

The L.E.A. should authorise certain of their officers to require attendance for medical inspection.

(i) The parent of a child attending a primary school or a secondary school maintained by the L.E.A. may be required by such *authorised* officer, to submit his child for medical inspection (see *Fox* v. *Burgess* in Note on Subsection 3 of Section 53 below for authorisation for some specific purpose; and

(ii) any pupil in attendance at a county college or any senior pupil at any other educational establishment may be required to submit himself for medical inspection.

Failure to comply with these requirements without reasonable excuse renders the parent, or the young person, liable to a fine not exceeding £5 (five pounds).

(3) It shall be the duty of every local education authority to make such arrangements for securing the provision of free medical treatment 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 and every local education authority shall have power to make arrangements as aforesaid with respect to senior pupils in attendance at any other establishment maintained by them.

If the medical inspection shows a need for medical *treatment* the L.E.A. must make arrangements for this treatment being obtained *free*.

Such treatment, however, does not include treatment at the child's home, except in the case of a child receiving primary or secondary education *otherwise than at school* under Section 78 (1). This may be the case of a child having a disease of a character, so serious, that it is impossible

to educate the child at school and a medical visit *to the home* would be authorised.

(4) It shall be the duty of every local education authority to make arrangements for encouraging and assisting pupils to take advantage of such facilities as aforesaid:

Provided that if the parent of any pupil gives to the authority notice 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.

The words " encouraged or assisted " apply to *treatment*. The medical inspection is compulsory. Free medical inspection with free medical treatment available for all, from 2 to 18, should assist materially in providing a healthier race in the future.

Under Section 1 of the *Children and Young Persons Act, 1933*, a person who fails to provide adequate medical treatment for his child is guilty of an offence under that section. E.g., the L.E.A. may take action under that section, if a parent refuses to obtain spectacles (even if provided free) for a child *if these are necessary to prevent injury to sight.*

In *Oakey* v. *Jackson*, [1914] 1 K.B. 216, a child was suffering in her health through adenoids for which the only remedy was a surgical operation which, it was stated, would not be a dangerous one. The parent refused to allow the operation. The court held that the justices might find on these facts that the parent had failed to provide adequate medical treatment for his child.

In *Davis* v. *London County Council* (1914), 30 T.L.R. 375, a child, after medical inspection at an infants school, was recommended to have an operation for adenoids. The mother consented for an operation to be performed under an anaesthetic During the operation some of the anaesthetic was spilled and the face of the child burned somewhat. A claim was brought alleging negligence on the part of the anaesthetist. The jury found there had been no negligence.

The judge held that where a L.E.A. enter into an agreement with a medical association in regard to the performance of operations on school children, the L.E.A. are not liable for any negligence on the part of the operators, if they engage competent professional persons to perform the operations.

(5) A local education authority may give directions to the managers or governors of any voluntary school 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.

In the case of medical inspection of pupils in county schools, the L.E.A. themselves provide the necessary facilities. This subsection empowers them to give directions to the managers or governors of voluntary schools to provide reasonable facilities to enable the L.E.A. to carry out their

duties in connection with medical inspection of pupils attending those schools. There is, however, the proviso that the managers or governors will not be required to incur expenditure in providing such facilities. The L.E.A. cannot insist by their directions on a new room being built for the purpose; if a new room is required the L.E.A. must provide it. Similarly if a folding screen be required to separate a part of a room to be used for this purpose, the L.E.A. must provide this.

Expenditure incurred by the L.E.A. in connection with this work under Section 100 (2) will be aided by a grant from the Minister of Health. See Subsection (7) of Section 13 and Subsection 6 of Section 15.

49.—Provision of milk and meals.—Regulations made by the Minister shall impose upon local education authorities the duty of providing milk, meals and other refreshment for pupils in attendance at schools and county colleges maintained by them; and such regulations shall make provision as to the manner in which and the persons by whom the expense 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 and teachers with respect to the provision of such milk, meals or refreshments, 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 to incur expenditure.

The present situation regarding school meals will continue normally until Part II of this Act comes into operation on the 1st April, 1945. This section empowers the Minister to make regulations for *continuance* of such service of meals. The present service of meals has been increased considerably during the last few years owing to a growing recognition of the necessity of raising the nutritional standard of the school population as an adjunct to the medical inspection and treatment referred to above in Section 48.

In 1943 there were about one-third of the pupils in attendance at elementary schools who were receiving school meals and three-fourths of the pupils receiving milk, with over one-half of the pupils in attendance at secondary schools receiving school meals and over two-thirds having milk. This was about five times the numbers in 1940. The normal procedure is to charge about 5d. per pupil per meal for the cost of the food, except in necessitous cases, where no charge is made.

The future procedure will depend upon the regulations the Minister may make.

These regulations will impose upon the L.E.A. the duty of providing milk, meals and other refreshment for pupils in attendance at schools and county colleges maintained by them.

The regulations will deal with :—

(i) The manner in which the expense of providing such milk, meals and other refreshments is to be incurred;

(ii) the persons by whom this expense is to be defrayed;
(iii) the facilities to be afforded (including any buildings or equipment required);
(iv) the services to be rendered by managers or governors or teachers respectively with respect to the provision of food or drink as aforesaid; and
(v) such other consequential matters as the Minister may deem expedient.

There are two provisos to this section :—

(*a*) The limitation of the duties of teachers with regard to these meals. During the war, teachers have rendered great service by undertaking what may be styled extraneous duties, in connection with the service of school meals. These are not to be continued as permanent arrangements for the future.

The general duty of the teacher is to be one of supervising the daily act of the school meal which is to become a part of school life, but the teachers will not be liable for such duties when the school or college is not open for instruction. (The teachers may supervise but they cannot be required to cook any meals.)

(*b*) The managers or governors of a voluntary school shall not be required to incur expenditure. See Note on Section 48 (5) above.

The Parliamentary Secretary (Mr. Ede), commenting on this, stated (9th May, 1944) in the House : " Our intention is that no expenditure in connection with school meals shall fall upon the managers or governors of a voluntary school, either with regard to staffing *or with regard to buildings*. . . ." Our intention is that it shall be borne by the local education authority." See Subsection 6 of Section 15 for existing voluntary schools and Subsection (7) of Section 13 for new voluntary schools.

Note (v) above will enable the Minister to specify in the regulations the employment of outside helpers to assist with the work of supplying meals, clearing away, washing up, etc. In Circular 1561 (June, 1943) the Board of Education gave some suggestions as to the payment to be made to such helpers.

Page iii of the Financial Memorandum attached to the Education Bill, after referring to the grants to be made by the Minister to L.E.A.s, stated : " Expenditure on school meals and milk will fall outside this formula. Expenditure on school meals will attract the special rate 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."

N.B. Section 6 of the *Unemployment Insurance Act, 1938* (see Appendix A) gives some particulars of the provision to be made for unemployed young persons attending "approved courses" of instruction. The following questions with the answers thereto appeared in the *School Government Chronicle* for April, 1943 :—

Question :

Will you kindly give your opinion as to whether the Education Committee and/or its teachers are liable in the following cases :—

(*a*) If a child happens to have an accident while the school meal is in progress, the scholars being under the supervision of one or more teachers, e.g.,
(i) if a child accidentally cuts itself; or
(ii) if one child wilfully stabs another with a fork.

(*b*) If a child has an accident *in the playground* after the scholars, having finished their meal, have been dismissed into the playground for recreation, say, until 1.30 p.m.

[It is to be assumed that such accident is not due to any defect in the surface of the playground.]

(*c*) If an accident happens *in school* after the meal is over: It is assumed that the scholars have been marched to one of the classrooms for silent reading.

There may be two answers to (*c*) :—

(i) If a teacher is on supervisory duties in the classroom; or

(ii) If the teacher (or teachers) are having their own mid day meal and are therefore not on duty in the classroom.

Answer:

As in cases of the nature referred to in the query the issue depends on the particular facts of each case it is only possible to give replies of a general nature, but it is hoped the replies will serve as a guide.

The general position is: A teacher is *in loco parentis* and is bound to take such care of the children committed to his charge as a careful father would take of his own children, and a failure to take such care may give rise to liability for negligence. Further, a child is to be judged as a child and is not expected to exercise the same amount of care as a person of mature years, so little or no reliance can be placed on the doctrine of contributory negligence (the doctrine that a plaintiff cannot recover if he has himself been guilty of such negligence as is in reality the proximate cause of the injury complained of).

Query (*a*).—The issue would probably depend on the age or mentality of the child—i.e., whether the child could reasonably have been entrusted with a knife or fork; and on the nature of the supervision—i.e., was there active supervision? Had anything occurred which would lead to an anticipation of the accident or offence, making it possible to foresee and avoid it? Where the implement causing the damage is such as a parent would allow a child of that age to use no liability might arise [*Dixon* v. *Roper*. Ikin and Sparke, *Compendium of Precedents* page 221].

Query (*b*).—The issue will probably depend on the reasonableness or unreasonableness of the absence of supervision in the particular circumstances, depending possibly on the age of the children, and, where supervision was provided, on the same considerations as dealt with in the reply to query (*a*) [see *Jackson* v. *L.C.C. and Chappell*, pages 219 and 220 of the *Compendium of Precedents*, in which liability was held though the accident occurred when the boys were going home. In this case a danger existed other than a defect in the playground surface.] In *Langham* v. *Wellingborough School Governors and Fryer* (1932), 96 J.P. 254, on appeal it was held that there was no negligence on the part of the schoolmaster when a pupil lost his eye through being hit by a golf ball propelled by a fellow-pupil.

Query (*c*) (i).—The issues likely to arise are those dealt with in reply to queries (*a*) and (*b*).

(*c*) (ii).—The issue would probably depend on the reasonableness of the children being left without supervision; the absence of supervision would probably be held to infer negligence, especially in the case of young children. There is a duty in certain circumstances to provide supervision [see *Shrimpton* v. *Hertfordshire C.C.*, page 215 of the *Compendium of Precedents*].

In all cases the criterion is " such care as a careful father would take." The judge has to say whether, from facts established by evidence to the satisfaction of the jury, negligence may reasonably be inferred ; the jurors decide whether negligence ought to be inferred.

The replies have dealt with the liability of the teacher. When a teacher is held to be liable, the Committee which employs him is also liable, provided the teacher acted within the scope of his employment. The Committee may also be liable if it fails in its duty, as, for example, it permits any dangerous condition to exist on school premises [*Morris* v. *Carnarvon C.C.*, page 214 of the *Compendium of Precedents*], or fails to provide adequate supervision, either directly or through its authorised agent [see *Shrimpton* v. *Hertfordshire C.C.*, referred to above].

In a recent case (1944) at the Birmingham Assizes, a parent claimed damages on behalf of his 11-year-old son for the loss of an eye. The boy had been struck by an arrow fired from a bow by the caretaker's son, aged 6.

The judge said that the Corporation could not be expected to exercise supervision over all the boys *in the school playground in the lunch hour*, and gave judgment with costs for the defendants. The judge in the course of his remarks said : ' Is a parent negligent and guilty of breach of duty *if he does not put under lock and key every table knife in the house* so that his child of 6 should not be able to take one and run out into the street ? " and answered in the negative.

50. Provision of board and lodging otherwise than at boarding schools or colleges.—(1) Where the local education authority are satisfied with respect to any child that primary or secondary education suitable to his age ability and aptitude can best be provided by them for him at any particular county school, voluntary school, or special school, or are satisfied with respect to any young person that further education should in his case be provided by requiring his continuous attendance at a county college, but that such education cannot be so provided unless boarding accommodation 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.

(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 of the child or to the wishes of the young person, as the case may be, with respect to the religious denomination of the person with whom he will reside.

Under this Act the L.E.A. must provide facilities for children to be educated at a primary school or a secondary school, also for young people at a county college. In addition to providing such facilities, they must see that the children or young persons can take advantage of those facilities.

Under Section 55, if transport be necessary in the opinion of the L.E.A. or of the Minister, such transport must be provided *free*, so that the children

or young persons may attend the educational institution most suitable to their age, ability and aptitude.

Here, under Section 50, if in any particular case the L.E.A. are satisfied that boarding accommodation is *necessary* for the child or young person to obtain the education provided, the L.E.A. are empowered to provide such. [Section 52 deals with payment therefor.]

If board and lodging is provided in this way *otherwise than at the school or college attended*, some care must be taken that the religious denomination of the person with whom he is to reside is approved by the parent of the child, or by the young person himself, where this is practicable.

The child will be happier if in his change from home life, he finds himself in a religious environment to which he was accustomed at home.

Under Section 61, if the child or young person is boarded *at the school or college attended*, the L.E.A. must pay the cost of such, if such board and lodging is *necessary* in their view in the particular case for which these arrangements are made, (i.e. if such education cannot be provided otherwise.)

51. Provision of clothing at schools maintained by local education authorities.—Where it appears to a local education authority 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, 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.

This section authorises the L.E.A. to provide clothing which they are of opinion is necessary, if the child is to take full advantage of the education provided at the school where the child is registered.

This is a new duty placed on the L.E.A.; Section 114 states that "clothing" *includes boots and other footwear.* See Section 52, following, as to payment for the clothing so supplied.

52. Recovery of cost of boarding accommodation and of clothing.—(1) Where a local education authority have under the powers conferred by the foregoing provisions of this Act, provided a pupil with board and lodging otherwise than at a boarding school or college, or with clothing, the authority shall require the parent 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 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, 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.

Section 52 provides for the recovery of part (or the whole) of the cost of providing board and lodging under Section 50, or of clothing (including footwear) supplied to a pupil under Section 51.

This latter item does not apply to clothing suitable for physical exercises at the school or college. (See Section 53 (3) later.)

(i) No payment is to be required from the parent where the L.E.A. have provided board and lodging *because it was not otherwise possible to provide education suitable to the age ability and aptitude of the child.*

The L.E.A. have a duty to provide education for a child. If this can only be done by boarding, then the parent cannot equitably be charged with the cost of carrying out such duty.

(ii) In cases other than the above, the parent may be required to pay such sums as the L.E.A. may consider that the parent is able to pay *without financial hardship.* (What constitutes "financial hardship" is not defined.)

(iii) The L.E.A. may recover sums due for board and lodging from a pupil who is in attendance at a county college (instead of from the parent of the pupil) if the authority are *satisfied* that he is in a financial position to pay the whole (or part) of the cost.

It would appear that if the pupil can only pay a part of the cost, the parent might be asked under (ii) above, to pay the whole or a part of the sums which the young person does not pay, if the parent can do this without financial hardship.

(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.

(3) Any sums payable by virtue of this section may be recovered summarily as a civil debt.

(See also Note on Section 61 (3) later.)

In proceedings to recover the cost it may be necessary to *prove* :—

(i) that the pupil or young person was actually boarded during the period for which the claim is made;

(ii) that the parent (or young person) is not unable through circumstances other than his own default to pay;

(iii) that the sum claimed is not greater than the cost to the L.E.A.;

(iv) that an account has been delivered to the parent (or young person) who has had opportunity to pay but has not paid.

53. Provision of facilities for recreation and social and physical training.—(1) It shall be the duty of every local education authority to secure that the facilities for primary secondary and further education provided for their area include adequate facilities for recreation and social and

physical training, and for that purpose a local education authority, with the approval of the Minister, may establish maintain and manage, or assist 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.

This is a kind of omnibus section giving a very wide range and comprehensive list of facilities for recreation and social and physical training which the L.E.A. have power, with the approval of the Minister, to provide, and not only have power but the second word of Subsection (1)—it *shall* be the duty, makes it mandatory for the L.E.A.

Previous sections of the Act deal with the necessary facilities for primary, secondary and further education for which the L.E.A. must secure provision whether by themselves or by voluntary bodies. This section emphasises the point that the facilities so provided must include facilities for bodily training as well as mental. Medical inspection and treatment are to be provided, milk, meals and other refreshments are to be supplied, but if the aim is to have "a sound mind in a sound body," this necessitates arrangements for helping to provide "*sound bodies.*"

These necessities include the establishment, maintenance and management of :—

(i) Camps and holiday classes ;
(ii) Playgrounds, play centres and playing fields ; and
(iii) Gymnasiums, and swimming baths.

It was definitely stated in the House of Lords that the L.E.A. have power to provide "community centres" but this was not included with swimming baths as the words do not form a sufficiently precise term. It has never been officially defined in a way that could be safely inserted in an Act of Parliament, and ultimately it might have to be decided by a Court of Law what was a community centre unless it were *defined* in the Act. The words "other places" would include what now goes by the name of "community centres."

The L.E.A. have a *duty* to provide such for those who are dealt with under their "development plan" for primary and secondary education or under their "scheme for further education."

In some cases arrangements may be made (for these pupils and students) at other establishments where facilities for recreation and physical training are available for them, the L.E.A. having power to assist in the maintenance and management of such for the pupils and students for whom they have a responsible duty to perform.

Subsection (3) of Section 15 makes it clear that playing fields must be provided by the L.E.A. for *existing* voluntary schools, and Subsection (7) of Section 13 deals similarly as regards *new* voluntary schools.

If the playgrounds of existing voluntary schools require alterations (including enlargements or other improvements) under Section 114 (2) (*a*), the L.E.A. will be responsible for the expenses of carrying out these *alterations*, for under Subsection 3 (*a*) of Section 15 the managers or governors

are only responsible for alterations to the school "*buildings.*" (See Note on Section 15.)

Subsection (1) is very wide in its comprehensiveness and enables the L.E.A. to arrange for interschool matches, grouped physical exercises or swimming galas, for different schools and other similar activities. It would appear that there is nothing to prevent a L.E.A. sending an " expedition " or a team to compete at the Olympic Games.

(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 co-operating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character.

If the managers or governors of a voluntary school wish to provide facilities for recreation, social and physical training for organisations in connection with their church, the L.E.A. may assist them to do this, if the Minister approves of this, say on the grounds that these facilities would be available for pupils or students for whom the L.E.A. are providing primary, secondary or further education. If the L.E.A. assist in this way there should be some agreement made as to the use to which the facilities should be put, that these should be available for those for whom the L.E.A. are responsible at definite times. Similarly, the L.E.A. may co-operate with youth groups as voluntary organisations.

(3) The Minister may make regulations empowering local education authorities to provide for pupils in attendance at any school or county college maintained by them such articles of clothing suitable for the physical training provided at the school or college as may be prescribed.

The L.E.A. may provide facilities for physical training under Subsection (1) above, and by this subsection they are empowered to provide clothing suitable for those taking part in this physical training. This may include uniforms for pre-service units, as well as clothing for games. There is no requirement that pupils must pay any part of the cost therefor as in the case of ordinary clothing supplied under Section 51. Under Section 114 " clothing " includes footwear, so this section would authorise the supply of plimsolls, cricket shoes or football boots.

(4) Sections one and two of the Physical Training and Recreation Act, 1937, (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.

The Local Authority, acting as a local authority, *and not as a local education authority,* may obtain a grant from the Minister of Education towards

expenses incurred by them as a " local authority " in aiding in the provision of facilities for physical training and recreation under Section 3 of the *Physical Training and Recreation Act, 1937*, e.g., a grant might be applied towards the provision of swimming baths or recreation grounds for use outside their duties as a L.E.A. (See Appendix A for Section 3 of this Act as amended.) Sections 1 and 2 of this 1937 Act have been repealed so that it is no longer necessary for the Minister to consult with the National Council for England and Wales, " nor for a recommendation of the ' grants committee ' " before making a grant. (The Minister intends to appoint a non-statutory committee to advise him in the administration of these grants.)

This section was included to enable the Minister of Education, *in a simpler way*, to continue to make grants to local authorities, voluntary societies, and clubs who were affording recreational facilities in towns and villages for people who could not, by any stretch of the term, be said to be undergoing any form of education.

Some Notes on Difficulties which may arise concerning Ownership.

From 1833 to 1870 many managers of voluntary schools received grants from the Committee of the Privy Council on Education (or the Education Department as it was called later) towards the building of schools, but *these schools became the property of the managers.*

When the Board of Education gave grants to L.E.A.s towards the building of training colleges in 1904, *the training colleges became the property of the L.E.A.* Similarly, when 20 per cent. of the L.E.A. other expenditure (which included expenditure on erecting elementary schools) was paid by the Board of Education, *these elementary schools became the property of the L.E.A.*

The making of a grant in this way does not create any ownership for the grantor.

On these grounds, where the L.E.A. make a grant to the managers of a local agreement school towards the erection of a school, the school is the property of those managers.

By analogy, where under Section 53 the L.E.A. *assists* by making a grant to a voluntary society or youth committee in the establishment of facilities for recreation and physical training, the facilities provided by the voluntary association (in the absence of any special agreement to the contrary) become the property of the association.

If the Minister makes a grant under Section 3 of the *Recreation and Physical Training Act, 1937*, the property (swimming bath, or recreation ground, etc.) remains the property of the grantee.

If *co-operation* with voluntary societies under Subsection (2) of Section 53 consists of making a grant-in-aid to the society, the society providing the facilities retains the ownership.

If *co-operation* takes the form of a definite proportion of the cost to be met by the L.E.A. and by the voluntary society (e.g., if the L.E.A. agreed to pay, say, 40 or 50 per cent. of the cost, and the voluntary society agreed to pay the other 60 per cent. or 50 per cent.), an agreement might be made in connection with the conveyance for a joint ownership, and if the property obtained, later on ceased to be used for its original purpose as a recreation ground, etc., on sale, the society and the L.E.A. would be entitled to their proportionate share of the proceeds.

In the case of a voluntary school playground to which the L.E.A. may

have to make alterations, the ownership of the playground would continue to belong to the foundation or to the voluntary school managers or governors. The carrying out of alterations (even if these included an enlargement) as a rule would not give the ownership of the altered playground to the L.E.A.

If, however, the enlargement should be considerable and a plot which is easily definable (not merely a few square yards on one side or the other) should be purchased by the L.E.A. for enlargement purposes instead of having this plot handed over absolutely to the foundation, or to the voluntary school managers or governors, the conveyance should contain a reversion clause (similar to those of conveyances under the *School Sites Acts, 1841*), so that if at any future time this plot of land should cease to be used for educational purposes it should revert to the L.E.A.

Where the L.E.A. have to provide *playing-fields* for voluntary schools, the conveyance should be made out to the L.E.A., who would thus retain the legal ownership of the fields, but a conveyance of an easement or of the *use* of the land *might* be made out for the managers or governors to be able to utilise the land as playing-fields, if intended for the use of one voluntary school or for a group of voluntary schools only, so long as the voluntary schools required the use thereof.

If the playing-fields should be provided for the use of both county schools and voluntary schools the conveyance of an easement to the voluntary school managers or governors would not be necessary, merely an agreement as to the terms and times on which or during which the voluntary schools might use them.

In the case of a controlled school transferred under Section 16 of this Act, if the L.E.A. provide a site for the school, the ownership of the site might remain with the L.E.A., but if the proceeds of the sale (or payment of a valuation), of the voluntary school and its site which is transferred has been handed over to the L.E.A. towards the cost of the new site and school buildings, the site might be conveyed to the foundation whose school is thus transferred : but the conveyance should contain a reversion clause on similar lines to conveyances under the *School Sites Act, 1841*, that on the building ceasing to be used as a primary or secondary school the site should revert to the L.E.A.

54. Power to ensure cleanliness.—(1) A local education authority may, by directions in writing issued with respect to all schools maintained by them or with respect to any of such schools named in the directions, authorise a medical officer of the authority to cause examinations of the persons and clothing of pupils 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 that the person or clothing of a pupil in attendance at any county college is infested with vermin or in a foul condition he may cause an examination thereof to be made.

(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 of the pupil, or in the case of a pupil in attendance at a county college upon the pupil, a notice requiring him to cause the person and clothing of the pupil to be cleansed.

(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 directing that the person and clothing of the pupil be cleansed under such arrangements.

This section deals with cases where it is necessary to take drastic action in the interests of the clean child quite as much as against the parents of the infested child, and where the L.E.A. feels that in the interests of all the children in a school there should be a general inspection of the school to ascertain whether any children are in a verminous condition.

The section was substituted for an earlier form of Section 54, during the committee stage and amended again later. The object is to enable the medical services of the various local education authorities to do all that is possible at the present time to cope with conditions in some environments which may be said to be a disgrace to civilisation. Reports of the condition of both person and clothing of children evacuated during the early stages of the second great war were bad in a number of cases, especially concerning children from certain slum districts.

(*a*) The L.E.A. may authorise, *in writing*, a *medical officer of the authority* to cause an examination to be made whenever he is of opinion that such examination is necessary in the interests of cleanliness.

(*b*) The L.E.A. may authorise *any person* (e.g., a nurse) to make such examinations where the medical officer considers on reasonable grounds that such is necessary.

(*c*) *Any officer of the authority* may serve a notice issued by the medical officer on the parent of a pupil or on a young person attending a county college to cause the person or clothing of the pupil or young person to be cleansed.

In *Fox* v. *Burgess*, [1922] 1 K.B. 623, it was stated that a resolution of appointment to the specific work as part of the person's duties should be satisfactory evidence of authorisation therefor by the L.E.A.

The third subsection enumerates some particulars to be included in the notice served.

(*a*) If the person or clothing is not cleansed to the satisfaction of a medical officer of the L.E.A. within the period mentioned in the notice, the medical officer may issue an order directing that the cleansing shall be carried out under arrangements made by the authority.

(*b*) If the person on whom the notice was served does not cause the cleansing to be satisfactorily performed, the medical officer may issue an order directing that the person and clothing of the pupil be cleansed under such arrangements.

(4) It shall be the duty 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 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.

(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.

The duty of the L.E.A. will be to make arrangements for the cleansing of persons or clothing:—

(*a*) at suitable premises;

(*b*) with suitable appliances; and

(*c*) by suitable persons.

In some of the "county districts" within an administrative county, a council in such district may be entitled to the *use* of suitable premises or appliances for cleansing purposes, which *may* have been provided in connection with the health services of the district, and therefore do not pass over to the new L.E.A. of the area with schools. Under this subsection the L.E.A. may require the council to permit the authority to use such premises and appliances for cleansing the persons or clothing of pupils or persons named in an order of the medical officer of the L.E.A. The terms for such use may be mutually agreed upon, but if no agreement as to terms can be made, the Minister of Health will decide the terms.

Subsection (5) authorizes compulsory conveyance to, and detention at, the place for cleansing.

(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 to a fine not exceeding twenty shillings.

This subsection (6) was inserted during the *Third* Reading in the House of Lords in substitution for a subsection (6) which had been inserted during the Committee Stage in the House of Commons. It is intended to meet cases where children have been cleansed in accordance with the preceding subsections but have returned to school very shortly afterwards in a verminous condition. When the renewed verminous condition is due to some neglect on the parent's part, steps may be taken to penalise the parent.

(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 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 or to comply with the requirements of a college attendance notice, 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.

This deals with a problem which may arise occasionally if action cannot be taken at once, for the examination of the person or clothing of a pupil, or for the cleansing of such person or clothing.

The pupil may be excluded from the school or college, if this course be considered necessary.

If the delay be due to no fault of the parent or pupil, no action can be taken against the parent or pupil for absence from school or college during the period of exclusion.

If, however, there is *wilful* default of pupil or parent, such action for non-attendance is possible.

(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.

This illustrates the reference to "suitable persons," mentioned in subsection (4) above.

55. Provision of transport and other facilities.—(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary or as the Minister may direct for the purpose of facilitating the attendance of pupils at schools or county colleges or at any course or class provided in pursuance of a scheme of further education in force for their area, and any transport provided in pursuance of such arrangements shall be provided free of charge.

(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.

The duty ("*shall* make") is placed on the L.E.A. to make arrangements for the provision of transport. If the L.E.A. do not make such arrangements, and there is a parent or group of parents, who feel that their children ought to be conveyed to some particular school, they can make representations to the Minister who will consider their case, and after hearing the reply of the L.E.A., he will give such directions as he thinks fit.

The arrangements apply to conveyance, where such is considered necessary, to schools or county colleges or to courses or classes provided in accordance with the L.E.A.'s approved scheme of further education, and such conveyance must be provided *free of charge* for the children and young persons.

This clause may enable parents to minimise some of the difficulties of single school areas, especially where children attached to certain denominations may be scattered over sparsely populated districts. A group of parents may desire transport to a neighbouring county school if there should be only a voluntary school in their area; or again, another group of parents may desire transport for their children to attend a neighbouring voluntary school if the only school in their area should be a county school, but parents cannot claim as a right free transport to a more distant school of the type required if there is one of the same type (county or voluntary) near. *If no arrangements are made for transport* to schools, colleges or classes, the L.E.A. may pay reasonable travelling expenses therefor. Arrangements may vary from area to area. In a very scattered district the cost of a pony for a boy may be authorised, or of a pony and trap for a small group of children, or a foot-bridge may be provided over a dyke or stream in a Fen district. In other places for young people a bicycle, or bicycles, may be provided. In cases where there are regular bus services, bus fares may be paid. In some urban areas the fares on a bus or tram may be paid, or special arrangements might be made for the use of a bus or tram or other conveyance to be run at specified times. It must be noted, however, that this section discontinues the practice of some L.E.A.s to arrange for scholars to purchase tram or bus tickets at reduced rates. Such transport must be provided *free*.

In the case of transport of pupils to a school for "physically defective" children, it is desirable that some reliable person should travel with them. These are generally known as "guides" and their expenses are paid. If teachers are acting as guides or supervisors their fares should be paid. This section would not cover teachers' fares except when attending and accompanying children. In some cases where children come a long way

by bus and parents have thought it in the interests of the children and have accompanied their children, the parents' fares have been paid.

The L.E.A. must accept responsibility if they do not provide such guides or supervisors. See also *Shrimpton* v. *Hertfordshire County Council* (1911) referred to in the Note on Section 11.

This section covers travelling expenses to technical, art, or commercial classes which may be held at places some distance from the pupil's home; or travelling expenses to a technical college if there should not be equivalent classes near the student's home, if such classes or college are arranged in accordance with the L.E.A.'s scheme of further education. Under Section 106 the L.E.A. may make a contribution to the L.E.A. of a neighbouring area which provides such courses of instruction, if the L.E.A. of the area where the pupil resides does not provide such classes reasonably near the student's home.

56. Power to provide primary and secondary education otherwise than at school.—If a local education authority are satisfied that by reason of any extraordinary circumstances a child or young person is unable to attend a suitable school for the purpose of receiving primary or secondary education, they shall have power with the approval of the Minister to make special arrangements for him to receive such education otherwise than at school.

What are " extraordinary circumstances " as referred to in this section may be discussed by the L.E.A. with the Minister as occasions arise. Serious physical disability or illness which precludes attendance at a school may necessitate the provision of medical inspection or treatment by special arrangements under Subsection (1) of Section 78.

The " circumstances " may be connected with the pupils themselves, or with their place of residence.

Will nursery school children or young infants living on the upper floors of blocks of flats, with no home resident able to take them to school, come under this category?

Will great distance of the residence from a school or college, e.g., two miles for under 8's or three miles for over 8's, with no convenient rail or bus transport, constitute " extraordinary circumstances " ?

On one occasion I paid an official visit to a small school in the Fen district where not one pupil in attendance had a single yard of macadamised road over which to travel. I saw there a party of three pupils who rode together on the back of a pony, a girl of about 10 seated behind, with the reins, and two younger brothers in front of her.

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 that any child in their 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, it shall be the duty of the authority by notice in writing served upon the parent of the child to require the parent to submit him for examination by a medical officer of the authority; and if a parent upon whom such

a notice is served fails without reasonable excuse to comply with the requirements thereof he shall be liable on summary conviction to a fine not exceeding five pounds.

(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.

The words "*if it appears* to the local education authority" will, in a number of cases, refer to the advice given to the L.E.A. by a medical officer, after an examination in accordance with Section 34 of this Act, or from a report from the head teacher of a school or college at which the pupil may be in attendance. In other cases the inquiry officers of the L.E.A. may report cases they learn about when visiting in their district to find causes of absence from school or for other purposes.

If the L.E.A., from the advice given by their medical officers' reports under Section 34, are of opinion that the mental disability is of such an extent as to render the child *incapable of receiving education at school*, the child will not be sent to a "special school," but the parent may, under this section, be notified *in writing* of the time and place at which the child can be again examined with a view to deciding whether the child is ineducable or not.

If the parent were to agree in writing that the former examination showed that the mental disability is of such an extent as to render him ineducable, it *may* not be necessary to have a further examination; but if the parent does not agree, then the parent *must* submit the child for medical examination under this section of the Act at the place and time notified, or he may be liable, on summary conviction, to a fine not exceeding £5 (five pounds).

(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 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, 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 whether such a report should be issued the report shall not be issued except by direction of the Minister.

Provision for the care of mental defectives at the present time is made under the Mental Deficiency Acts, 1913 to 1938. The local authorities

concerned are county and county borough councils. The 1913 Act provided that for Lancashire several county boroughs should be combined with the county council in making provision for these ineducable persons, and each county borough pays for the care of the persons in residence at the county institution from their area. (See *Mental Deficiency Act, 1913*, in Appendix A.)

It is the duty of the L.E.A. to make arrangements to ascertain what persons within their area are defective and subject to be dealt with under the Mental Deficiency Acts.

The above subsection (3) continues this duty, and if on consideration of a report by their medical officer, with reports or information obtained from teachers and others (if the child is in attendance at school), the authority decide that the child is suffering from such a disability of mind as to render him incapable of receiving education at school, they must report the case to the appropriate local authority.

The Mental Deficiency Committees provide institutional care for patients who need it, and community care for defectives who are placed under guardianship or supervision.

Not less than 14 days' notice must be given by the L.E.A. to the parent of their intention to report the case to the mental deficiency authority that the child is ineducable. (See Note on Section 34 above.)

If the parent objects and refers the question to the Minister as to whether such a report shall be issued or not, the L.E.A. must not report the child as ineducable except by direction of the Minister.

(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.

As mentioned above, in cases where a child is in attendance at a school the report of the teachers of the school may help the L.E.A. to decide whether the particular way in which the mental disability may show itself will or will not be detrimental to the interests of other *very suggestible and imitative* infants, or even older pupils.

(5) If the local education authority are satisfied that any child in attendance at a school maintained by them or at any special school 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 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.

This subsection ensures that a child shall continue *under supervision* by the mental deficiency authority, if such is considered to be necessary, after leaving school.

The L.E.A. must notify *both* the mental deficiency authority, and the parent, that by reason of disability of mind the child may require such supervision.

(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; 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.

The report of the L.E.A. to the mental deficiency authority must be accompanied by the necessary records and other information concerning the child.

It will then be for the mental deficiency authority to decide whether it is a case which comes under their jurisdiction and for whom they must provide.

Practically, in most cases it will be a case for mutual agreement between the education committee and the mental deficiency committee of a council to decide which committee shall be responsible for the future care of the child.

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 relating to the prohibition or regulation of the employment of children or young persons any person who is not for the purposes of this Act over compulsory school age shall be deemed to be a child within the meaning of that enactment.

Section 107 of the *Children and Young Persons Act, 1933*, states " *child* " *means a person under the age of 14 years.*

When the compulsory school age under this Act is extended to 15, " 15 " will be substituted by this section of this Act, for " 14 " in that Act. Similarly, when the period of compulsory school age is further extended to 16, " 16 " will be substituted for " 15 " in Section 107 of the *Children and Young Persons Act, 1933.* (See Eighth Schedule to this Act.)

Similar changes will follow in Section 4 of the *Employment of Women, Young Persons and Children Act, 1920.*

59. Power of local education authorities to prohibit or restrict employment of children.—(1) If it appears to a local education authority that any child who is a registered pupil at a county school, voluntary school, or special school, 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 served upon the employer, prohibit him from employing 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.

Under Section 96 of the *Children and Young Persons Act, 1933,* the local authority on whom duties are conferred *by that Act,* is the L.E.A. for elementary education, and as respects other persons, the local authorities are the councils of counties and of county boroughs.

Under this Act there will be no local education authorities *for elementary education only,* consequently *all* duties and powers under that Act will now refer to the councils of counties and of county boroughs and not to such councils of non-county boroughs or urban districts which, before the passing of this Act, were local authorities for " elementary " education only.

The local education authority is empowered by Sections 18 and 96 of the *Children and Young Persons Act, 1933,* to prohibit the employment of children under a specified age, and to make byelaws regulating the employment of other children and young people.

In the case of children of compulsory school age, such employment (as limited in extent by that Act) can only take place out of school hours, i.e., in the morning before school opens and or in the evening, on days when the school attended is open, but at any authorised hour when the school is closed.

It may be that a child registered at a county school, a voluntary school, or at a special school, is employed out of school hours, not in contravention of the byelaws of the L.E.A. made under the 1933 Act, yet the nature of the employment may be such that the physique and health of that particular child is prejudiced so that *he is unfit to obtain the full benefit of the education provided* whether that be due to the hours worked or to the kind of work, e.g., lifting or carrying heavy parcels.

This section enables the L.E.A to intervene even if the particular employment may not be contrary to the byelaws

A copy of the Minute of the L.E.A. prohibiting the employment should be served on both the employer and the parent. If proceedings are necessary to enforce the prohibition, etc., of the L.E.A., the officer of the L.E.A. who may lay the information should have a copy to show that he has the authorisation of the Committee to institute the proceedings and also to produce to the employer if the employer refuses to answer questions.

If the resolution of the L.E.A. is to be produced by the officer, it should be signed by the Chief Education Officer or someone deputed by him to sign.

See *Margerison* v. *Hind and Co.* (1922), 126 L.T. 249, that a copy of the report of the medical officer of the authority should be submitted to the Court as part of the evidence.

(2) A local education authority may, by notice in writing served upon the parent 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.

This subsection authorises the L.E.A. *by notice in writing* to require the parent or the employer to provide the authority within a specified time with such information as will enable them to decide whether they should intervene under the preceding subsection in the interests of the child. If the authority are of opinion that the child is unfit through such employment to obtain the full benefit of the education provided for him, the L.E.A. must prohibit that type of employment.

(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, 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.

Employers who contravene any prohibition or restriction of employment imposed by subsection (1) above; and employers who fail to comply with the requests for information under subsection (2), are liable on summary conviction:—

(i) On a first offence to a fine not exceeding £1 (one pound);
(ii) On a second offence to a fine not exceeding £5 (five pounds);
(iii) On a third (or subsequent offence) to a fine not exceeding £10 (ten pounds); or, to imprisonment for a term not exceeding one month; or, to both such fine *and* imprisonment.

(4) Subsection (1) and subsection (3) of section twenty-eight of the Children and Young Persons Act 1933 (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.

If the L.E.A. represent to a Justice of the Peace that they have reasonable cause to believe that an employer is contravening any prohibition or restriction of employment made under subsection (1) above, the Justice may, by order under his hand addressed to an officer of the L.E.A., empower him to enter (at any reasonable time within 48 hours of the making of the order) any place in, or in connection with which, the child or young person is, or is believed to be, employed; and to make inquiries therein with respect to that person. [Section 28 (1) *Children and Young Persons Act, 1933.*]

Any person who obstructs any officer of the L.E.A. in the due exercise

of any powers conferred on him as above, or who refuses to answer, or answers falsely, any inquiry he shall be liable, on summary conviction, *in respect of each offence*, to a fine not exceeding £20 (twenty pounds). (Section 28 (3) *Children and Young Persons Act, 1933.*)

60. Effect of college attendance notices on computation of working hours.—(1) Where a young person 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 required of him during that week by a college attendance notice served on him shall, for the purposes of the limitation, be deemed to be time during which he has been so employed in that week.

It is intended that the hours of attendance shall be taken from the hours of employment, as regulated by existing law, or by any subsequent industrial legislation.

Compulsory attendance at a county college must be calculated as taking place during the employers' time, and must not be taken out of the young person's leisure time.

If the working hours in any industry are limited, say to 48 hours per week (exclusive of any permissible overtime) and the young person attends the college compulsorily for, say, seven hours, then his hours of work during that week must be limited to 41 hours (exclusive of overtime), the seven hours' work at the college being taken as part of the 48 hours ordinarily available for the employer's work.

(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.

Work in *excess of the reduced hours of work* in subsection (1) above, shall be considered and paid for as *overtime work*.

If a young person be employed in an industry in which the working hours are limited to, say 48, but overtime *at special rates* is allowed, say for six hours per week (overtime being allowed to count before or after some specified time of the day), if the young person attends his college in accordance with his college attendance notice, for, say seven hours in any week, the seven hours must be considered as part of the ordinary

working hours for his employer, i.e., " *otherwise than in excess of the limitation of hours.*"

As in the preceding subsection the working hours will be limited to 41 in this case. If, now, he is employed, say for five hours during that week as overtime, *he will be entitled to the overtime rates of pay* for those five hours. The employer cannot plead that because the young person has not worked for more than 48 hours in that week he will not be entitled to any overtime rate of pay.

If he works for, say 46 hours that week, that must be calculated as 41 hours worked at ordinary rates of pay, and five hours worked at overtime rates, independently of any pay which may be given for the seven hours he attended the college.

Miscellaneous Provisions.

61. Prohibition of fees in schools maintained by local education authorities and in county colleges.—(1) No fees shall be charged 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.

This rendering all schools which are maintained by a L.E.A. non-fee paying is an extension of Section 26 of the *Education Act, 1918*, which freed elementary schools from fees.

No school which is maintained by the L.E.A. may charge any fees, whether for *admission or for tuition*. This prohibition of fees includes county primary schools and county secondary schools, voluntary primary schools and voluntary secondary schools, and also county colleges maintained by the L.E.A.

(2) Subject as hereinafter provided, where any pupil in attendance at any such school or college is provided at the school or college with board and lodging at the expense of the local education authority, fees shall be payable in respect of the board and lodging not exceeding such amounts as may be determined in accordance with scales approved by the Minister:

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 cannot otherwise be provided by the authority for him, the authority shall remit 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.

It is only in *schools maintained by the L.E.A.* that questions as regards repayment of boarding fees arise here. This does not refer to boarding fees at an independent school which the parent who sent the pupil may pay.

Although admission fees, and fees for providing tuition, are prohibited under subsection (1) above, under this subsection fees may be charged for board and lodging of pupils at the school or college which is maintained by the L.E.A. (See Section 52 for fees, when boarded, otherwise than at the school or college.)

The amount of the fee for board and lodging, which the L.E.A. so provide, must be in accordance with *scales approved by the Minister.*

Pupils may be boarded at a school or college for various reasons. If the L.E.A. have admitted a pupil as a boarder at a school or college maintained by them, *because*, in their opinion, *education suitable to his age, ability and aptitude cannot otherwise be provided by the authority*, the L.E.A. must not charge such pupil any fees for board and lodging.

In other cases, if the L.E.A. are of opinion that the payment by a parent of the full fee for board and lodging, in accordance with the scale of fees approved by the Minister, would involve the parent in financial hardship, the L.E.A. may charge such reduced fee as would avoid such hardship, or in special cases may charge no fee for board and lodging.

"Financial hardship" is not here defined; this is left to the discretion of the L E.A.

(3) Any sums payable under the last foregoing subsection in respect of a pupil shall be payable by his parent, so, however, that where the local education authority are satisfied in the case of any young person 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 of by his parent; and any sums so payable shall be recoverable summarily as a civil debt.

If the boarded pupil be in attendance at a county college (e.g., a young person from a rural district attending the college for a continuous period of four or eight weeks), and the L.E.A. are satisfied that his financial circumstances are such that *the pupil* can afford to pay the fees for board and lodging himself, then any fee payable under subsection (2) above should be paid by the pupil instead of by the parent.

Fees due for board and lodging under subsection (2) above may be recovered summarily as a civil debt.

For the recovery of arrears it is only necessary to prove the debt and judgment must be given for payment to be made. If, however, proceedings be taken for the debtor to be committed for not complying with the order made by the justices, the L.E.A. must prove that the debtor has had means to pay since the order was made and has not taken steps to pay.

[Sect. 12 (a) of the *Money Payments (Justices Procedure) Act, 1935.*] See also Note on Sect. 52 (3) above.

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, 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 colleges and other establishments maintained by local education authorities, and for that purpose the Minister 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 assist the provision of any other facilities specified in the direction.

One of the most important factors for the success of the arrangements made under this Act for the educational benefit of children and young persons is the provision of a sufficient number of efficient teachers for the various schools, colleges and other educational establishments maintained by the L.E.A.s.

The Minister must take what steps he considers expedient to secure that there are sufficient facilities available for training the teachers so necessary.

Under this section the Minister may give directions to *any L.E.A.* to establish, maintain, or assist any training college, or other institution.

Or the L.E.A. may be instructed to provide or assist in the provision of any other facilities the Minister may specify.

In the recently issued McNair Report on the " Training of Teachers " there are two suggestions made for the organisation of the training of teachers :—

One suggestion (made by one part of the committee) favoured the development of the existing system of joint boards. Under this system the universities participate but have no dominating ascendancy.

The other suggestion (made by the other part of the committee) is that all training of teachers should be under the universities, each university acting through a university " school of education."

In Circular 1562 (issued May, 1944) the Board of Education gave an outline of their proposals for an *emergency* scheme of training for the teaching profession for men and women released from H.M. Forces and other forms of national service.

A report accompanying the Circular stated that within a year a satisfactory percentage of these candidates will be able to acquire the art of class management and to obtain sufficient academic knowledge to enable them to begin teaching *within a year*. The scheme will be entirely financed by the Exchequer.

I have included in an Appendix an account of some attempts at " Training of Teachers a Hundred Years Ago," which may be compared with the present system, and will be of interest to many chief education officers as well as to teachers.

(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.

Some L.E.A.s do not train teachers but employ teachers who have been trained in voluntary training colleges, university day training colleges, or

at the cost of other L.E.A.s who have provided or assisted to provide training facilities as in subsection (1) above.

The Minister may give directions to such L.E.A.s as do not provide training facilities to contribute towards the expenses of those who do.

Section 12 of the *Economy* (*Miscellaneous Provisions*) *Act, 1926* (repealed by the last Schedule of this Act) stated : The grants payable to such local education authorities for higher education as do *not* provide training colleges may be reduced in any year (in such manner as may be provided by regulations made by the Board of Education) by a sum not exceeding £70,000 in the aggregate.

See Ikin and Sparke, *Changes in the Education Act, 1921,* p.101-103, for the Board's Regulations of 1933 for apportioning the £70,000 among those L.E.A.s who did not provide training colleges.

63. Exemption from building byelaws of buildings approved by the Minister.—(1) Section seventy-one of the Public Health Act, 1936 (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 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."

(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 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.

School buildings constructed, or altered, *in accordance with plans approved by the Minister of Education* are exempted from local building byelaws. Also the Minister has power to make modifications, if necessary, in the application of such building byelaws.

In *Higgs and Hill* v. *Stepney Borough Council,* [1914] 1 K.B. 505, it was held that this does not exempt from byelaws requiring the consent of the council to the erection of a hoarding in front of proposed buildings.

Paragraph (*a*) of Section 71 of the *Public Health Act, 1936,* for which this paragraph is substituted, stated that the buildings exempted from building byelaws included :—

(*a*) any buildings, being school premises, erected or to be erected according to plans which are under any regulations relating to the payment of grants, required to be, and have been, approved by the Board of Education ;

This had replaced to some extent Sect. 166 of the *Education Act, 1921.*

Section 61 (2) empowers the Minister to direct by order that premises to be erected in accordance with plans *which he has approved* may be exempted from provisions in *local* Acts or from byelaws made thereunder. This removes any difficulty which might arise if a provision of some kind differing from the general laws had been incorporated in some local Act.

The reason underlying this is that school buildings are designed for a particular purpose and byelaws which are of general application may not in every case be suitable.

64. Exemption of voluntary schools from rates.—No person shall be liable to pay, in respect of the school premises of any voluntary school, any rate the proceeds of which are applicable to public local purposes, 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.

The Voluntary Schools Act, 1897, was passed to assist the managers of voluntary schools financially (after the 1896 Bill had failed to pass). Section 3 of that Act stated " No person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices or playgrounds of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof." This was repeated in Section 167 of the 1921 Act.

Here Section 62 extends the exemption from local rates from former *elementary schools* to *all voluntary schools*, whether primary or secondary. The exception referring to paying rates on any profits from letting the school is here omitted. The former law referred to public elementary schools. This section extends it to include voluntary secondary schools. This is only logical for present senior schools will be secondary ones under this Act.

65. Endowments for maintenance of voluntary schools.—Where any sums which accrue after the date of the commencement of this Part of this Act in respect of the income of any endowment are required by virtue of the provisions of any trust deed to be applied towards the maintenance of a school which a local education authority are required to maintain as a voluntary school, the said sums shall not be payable to the local education authority, but shall be applied by the managers or governors of the school towards the discharge of their obligations, if any, with respect to the maintenance of the school, or in such other manner, if any, as may be determined by a scheme for the administration of the endowment made after the date of the commencement of this Part of this Act.

In the course of centuries the law of educational endowments has been gradually evolved in England, but through the whole of this development has run one thread, that *the charitable intents of the givers and founders of such endowments must be carried out, if in any way possible.*

Where this was not possible, the *cy-près* (*Fr.* near thereto) doctrine was developed by the Court of Chancery, which (owing to the triumph of the Chancellor's party over the Treasurer's party in the reign of Edward II) had become the Court of Equity in which endowments and trust matters should be dealt with. The Court of Chancery, however, developed in the course of centuries an over-specialising of procedure, and an ultra-conservative retention of formalities, with a consequent expensiveness and dilatoriness in reaching decisions, which was ruinous to many small endowments.

In 1853 the *Charitable Trusts Act* was passed, which set up a permanent

body of Charity Commissioners which could exercise a more regular supervision of charities, *in addition* to the intermittent supervision by the Court of Chancery, which remained. This Act provided more satisfactory and inexpensive arrangements for the security and safe keeping of the charity property.

[Endowed School Commissioners were appointed in 1869 to deal specially with the endowments of schools (other than a few public schools), but their functions were, in 1874, resumed by the Charity Commissioners.]

By the Board of *Education Act, 1899*, and various Orders in Council made in accordance with that Act, the jurisdiction of the Charity Commissioners in trusts relating to *educational* endowments was transferred to the Board of Education. The files of papers relating to these endowments were taken over from the Charity Commission offices to the offices of the Board of Education.

See Note on Section 2 above for " Orders in Council."

The endowments thus transferred are not restricted to those relating to primary and secondary schools but include trusts dealing with monies applicable to the general benefit of scholars at school or college, also to trusts relating to the promotion of religious knowledge.

The *Education Act, 1902*, however, made a breach in the centuries-old rule of law—that *recipients should have some educational benefit which they would not otherwise have obtained.*

This (1902) Act definitely authorised certain endowment funds or parts of endowment funds *to be used in aid of the rates* levied for the purposes of providing *elementary* education.

Now the *Education Act, 1944*, alters this, and endowment funds shall no longer be used for the relief of rates, whereby many persons, other than those for whom the endowment was intended, benefited.

In one county borough an endowment of about £150 per annum, when applied by the L.E.A. in relief of rates was frittered away to provide rate-aid of about one-thousandth of a penny per person in the borough.

Any fund accruing in respect of the income of any endowment which should be applied towards the maintenance of a school which the L.E.A. are *required to maintain as a voluntary school* will not be paid over to the L.E.A. after 1st April, 1945, but will accrue to the trustees of the endowment.

This endowment income may be applied :—

(i) towards the discharge of the obligations of managers of the voluntary primary school to which the endowment related, or of the governors of a voluntary secondary school, if this were formerly a voluntary senior school to which the endowment related. This course may be helpful in connection with the immediate rehabilitation of the school, or in the case of future external repairs to the school buildings ; or applied

(ii) in such a way as may be determined by a scheme for the administration of the endowment made after 1st April, 1945.

A scheme might be prepared and submitted to the Minister of Education to provide financial aid for pupils in the area to which the endowment related, or to provide education benefits which the inhabitants of that area would not otherwise have obtained.

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 shall have power, so far as may be authorised by arrangements approved by the Minister, to make grants to the governors of any aided secondary school for the purpose of helping them to discharge any liability incurred, before the date of the commencement of this Part of this Act, 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.

This section enables a L.E.A., if they think fit and if the Minister approves, to assist the governors of a voluntary secondary school to meet liabilities incurred before the date of the commencement of Part II of the Act. It is strictly limited in character, and will enable the L.E.A. to *continue to help* to pay off loans to meet expenditure on the school premises where the L.E.A. had previously given that assistance by way of a deficiency grant under the previous Education Acts.

The arrangements for continuance of help must be approved by the Minister.

67. Determination of disputes and questions.—(1) Save as otherwise expressly provided by this Act, any dispute between a local education authority and the managers or governors of any school with respect to the exercise of any power conferred or the performance of any duty 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.

Questions may arise between the L.E.A. and the managers or governors of a voluntary school on various matters: whether repairs are such as the managers should carry out or not, are they merely "internal repairs" or do they constitute an "improvement"; whether the dismissal of a teacher is or is not really on religious grounds; and so on.

This subsection ensures that the propriety of the action of some particular body of managers or governors *based on an opinion* can come within the discretion of the Minister.

Section 93 authorises the Minister to institute a local inquiry, if, on the submission of the case to him, he considers it would be expedient to set on foot the machinery for such inquiry, but *this section does not give managers or governors a prescriptive right to have a local inquiry.*

See also Additional Note on Section 16 (1).

(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, or whether contributions 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.

Various questions between local education authorities have arisen at different times as to payment for the education of pupils from one area being educated at schools in another area. Some arose on the provisions of the *Education (Institution Children) Act, 1923.*

All inter-area disputes may be settled by the Minister instead of being brought before the Court.

(3) 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.

Section 28 (1) states that the religious instruction in an aided, or special agreement school, shall be under the control of the managers or governors and *shall be in accordance with any provisions of the trust deed belonging to the school* (if any). (See Note on Section 28 (1) above.) The trust deed may specify *who* shall have power to decide whether the religious instruction is given in accordance with the provisions of the trust deed or not, and this subsection continues the powers for decision therein given.

If the trust deed does not grant to any person, ecclesiastical or other, the power to decide whether the religious instruction be in accordance with that deed or not, this *power is not given to the Minister to settle it,* as in so many other sections of this Act.

In a really serious dispute the question may have to be brought before the High Court for an interpretation of the provisions of the trust deed. (See Section 114 for a definition of "trust deed.")

(4) If any question arises whether any alterations to the school premises of a county school or a voluntary school would amount to the establishment of a new school, that question shall be determined by the Minister.

This subsection places in the hands of the Minister the decision as to whether a *new* school is required or not. Section 16 (1) definitely states that a transferred school does not become a *new* school.

Subsection (11) (*b*) states that in their "development plan" for their area the L.E.A. must specify what *alterations* are required in the *premises* of any school, whether a county school or a voluntary school.

Section 114 states that "*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. (See also the eighth clause of the Second Schedule to this Act.)

Further, Section 114 states that "*Alterations*" in relation to any school premises includes any improvements or enlargements which do not amount to the provision of a new school.

See Notes on Section 13 for procedure if a new school is required and Section 16 in connection with transferred schools.

68. Power of Minister to prevent unreasonable exercise of functions

—If the Minister is satisfied, either on complaint by any person or otherwise, that any local education authority or the managers or governors of any county or voluntary school have acted or are proposing to act unreasonably 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 as to the exercise of the power or the performance of the duty as appear to him to be expedient.

The purpose of this section is to provide some court of appeal in cases where a L.E.A. or managers or governors of county or voluntary schools have acted unreasonably. The Minister will only deal with a matter on a complaint or otherwise. The words "or otherwise" enable him to move *proprio motu* but that would be very exceptional.

The only grounds on which the Minister could act is if he is satisfied that a local authority (or the managers or governors) has been unreasonable in the exercise of its discretion.

It is anticipated that the decisions of the Minister will in a great majority of cases relate to very small matters, e g., if under subsection (2) of Section 50 a parent objected to the household in which a L.E.A. was boarding his child on the ground that the religion of the household was not the same as his own.

If the Minister came to a decision to reverse a decision of the L.E.A. he would then *direct* the L.E.A. to do what he told them, and if the L.E.A. neglect to carry out the directions so given, the Minister's remedy would be *mandamus* against the authority. (See also subsection (1) of Section 99.)

In moving the inclusion of this section during the Report Stage in the House of Lords, the Lord Chancellor said: "If a body of managers were to fail in discharging any duty imposed upon them the remedy naturally appropriate would be mandamus, but where managers or other persons are given a discretion then, even if they did exercise that discretion in what would appear on further consideration to be an unreasonable way, mandamus would not be an appropriate remedy because mandamus forces people to discharge their duty. They would reply, 'we have to consider this, and we have considered it.' On the other hand, the educational system of the country which is, in part at least and rightly so concentrated in the Ministry of Education, though it works through these local bodies, ought not to admit of a completely unreasonable exercise of a discretion."

In some cases there might be a dismissal of a teacher by a body of managers or governors on grounds that might cause dissatisfaction, that is, a disputed case that depended on the opinion of the managers or governors. This enables the Minister on complaint or otherwise to take such action as he considers expedient if in his opinion the dismissal suggested is a case of injustice to the teacher concerned.

69. Powers of Minister as to medical examinations and inspections.—(1) The Minister may make regulations as to the conduct of medical examinations and medical inspections 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.

For various purposes medical examination and medical inspections must be arranged for by the L.E.A.

See Sect. 34 for Inspection *re* special educational treatment, Sec. 48 for Routine Inspections ; and Sect. 54 for Inspection for Cleanliness.

Such examinations and inspections must be conducted in accordance with regulations made by the Minister. (See also Section 100 later.)

The regulations may refer to the types of examinations which may be general routine examinations during the compulsory school age period, or special examinations for estimating the extent of any mental disability or the degrees of deafness or of deficiency of sight, etc.

Such examinations must be conducted by medical practitioners who possess the special qualifications or experience which the regulations may specify.

In some cases a medical practitioner who has been *selected with the approval of the Minister* may conduct an examination, e.g., in the case of the appeal of a parent to the Minister against his child being recommended to attend a special school for special educational treatment, or to be reported to a mental deficiency authority as unable to profit by education so provided.

(2) Where any question is referred to the Minister under this Part of this Act, then, if in the opinion of the Minister the examination of any pupil 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 served on the parent of that pupil, or if that pupil is in attendance at a county college 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 to a fine not exceeding five pounds.

Under this subsection *the Minister may appoint* a medical practitioner to conduct an examination such as is referred to in the Note above on 69 (1), instead of the practitioner being *selected by the L.E.A. with the approval of the Minister.*

In this case the parent may be required to submit his child for examination by the practitioner so appointed, or a person in attendance at a county college may be required to submit himself for similar examination.

Failure to comply with this requirement, without reasonable cause, renders the parent, or the college pupil, liable, on summary conviction, to a fine not exceeding £5 (five pounds).

PART III.

INDEPENDENT SCHOOLS.

Introductory Note.

Part II of this Act makes provision for full-time education of all of compulsory school age, with part-time education of all over school age up to the age of 18: a truly democratic scheme with ancillary treatment (medical, etc.) for all pupils.

This is analogous to the "public school" system (or the "common school" system) of the United States of America, under which schools are provided by the public, for the public, and chiefly at the expense of the public.

In a democratic country *equal educational opportunities* should be free to all, to provide equal opportunities for self development, and to fit the people for self-government in the State. A good educational system will help to ensure the stability and welfare of the State.

In England and Wales the *Education Act, 1891*, was an attempt to make *elementary* education free, and this movement was rendered more complete by Section 26 of the *Education Act, 1918*.

In the United States most of the States provided free elementary education, but when high schools began to develop, and the payment of taxes (especially in the poorer States) for education became heavier, an antagonism to the provision of education beyond the elementary stage was met. An attempt was made by the State of Michigan to exclude high schools from the common school system, so that they must be supported out of funds other than those intended for common schools. The case was carried to the Supreme Court (*Kalamazoo Case* (*1874*) *Supreme Court Cases*). The decision established the principle that "the high school is an integral and an essential part of the common school system, and equality of educational opportunity must be guaranteed to every boy and girl, irrespective of creed or social status." Hereafter *free* high school education developed at a rapid rate.

In England and Wales, Section 61 (1) of the *Education Act, 1944*, ensures that secondary schools shall be free from 1st April, 1945.

In both the United States and in England and Wales, private schools or independent schools have existed, side by side with the publicly supported schools, without supervision by the State. On one occasion the State of Oregon passed a law to close all private schools in this State and to compel all children to attend the public schools. This case was brought before the Supreme Court (*State of Oregon Case* (*1925*), *Supreme Court Cases*). This court decided that the law was unconstitutional. "The fundamental theory of liberty, on which all government in the Union reposes, excludes any power of the State to standardise the children and force them to accept instruction from public teachers only."

Here was an official recognition that private schools might continue to exist, in the interests of variety and differentiation. (In the United States a little under 10 per cent of children of school age are in attendance at private schools.)

Now for the first time in the history of education in England and Wales, by Part III of this Act, independent schools are to be supervised by the Ministry of Educetion, *in the interests of the children in attendance thereat*, but no State supervision of independent schools exists in the United States

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, 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 makes application for the purpose in the prescribed manner 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, the proprietor is disqualified from being the proprietor of an independent school or the school premises are disqualified 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

A "*Registrar of Independent Schools*" will be appointed by the Minister, and the Registrar will keep a Register of Independent Schools. (An independent school is a school which provides full-time education for pupils of compulsory school age but which is *independent of the statutory system of education* as described in Part II of this Act. It is not maintained by the L.E.A. nor does the proprietor receive grants from the Minister.)

As regards the size of the school, there must be *at least five pupils of compulsory school age*, whether there are other pupils over or under that age or not in attendance. (See Section 114 later.)

The proprietor of such a school must make application to the Registrar if he desires his school to be placed on the Register. The application must be made in the manner prescribed by the Minister, and he must give the prescribed particulars.

Any independent school must be open at all reasonable times to public inspection. This will enable the Minister to obtain information as to the efficiency of the education provided in the school; that hours of duty of staff, and the conditions under which such duty is rendered are not such as will lower the efficiency of the school.

Although the Act does not here insist on the specified conditions of premises as prescribed in the Regulations under Section 10 of this Act yet, if the school be residential say, and the dormitory accommodation should be such as to militate against pupils keeping really fit to profit by the education provided, this might be taken as lowering the efficiency of the school.

An independent school, after making application for registration, may be placed provisionally on the Register, until the school is inspected, but if an order should be issued later on in accordance with later sections of this Act, *it shall not be registered* if such order states:—

(i) the *proprietor* is disqualified from being the proprietor of an independent school; or

(ii) the school *premises* are disqualified from being used as a school; or

(iii) the premises are used, or proposed to be used, for any purposes for which the order disqualifies them.

(*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, gives notice to the proprietor that the registration is final.

On receipt of an application for registration made in the prescribed manner, and also of the required particulars, the Registrar may place the school temporarily on the register but this registration will be provisional only. (See Subsection (3) (*b*) below.) Final registration can only take place when the school has been approved after such inspection.

(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 that school or schools of that class from registration, and any school so exempted shall be deemed to be a registered school.

There are schools which are known as efficient secondary schools and also some known as preparatory schools, schools which have been previously inspected by Ministry of Education inspectors, which the Ministry can inspect at any time, and about which the Ministry have full information. This clause will enable the Minister to *exempt them from an inspection for registration purposes only.* Such exempted schools will be deemed to be registered schools. Similarly the "approved" schools under the Home Office may be exempted, also some schools in orphanages.

The words "*any class of independent schools*" will include those schools recognised by the Ministry as "efficient secondary schools," and does not in the early stages of registration require the individual names of schools.

This subsection implements paragraph 173 of the Report of the Departmental Committee on Private Schools, which stated:—

> "There should be the following exemptions from registration requirements and compulsory inspection of schools, the schools being exempted being *deemed to be* registered schools:—
>
> (*a*) Any school in which the Board of Education are satisfied that adequate information is available without inspection and that the requirements of the Statute and Regulation are fulfilled might be exempted by the Board at their discretion; and
>
> (*b*) All schools recognised by the Board as efficient secondary schools should be exempt."

These conditions for exemption will enable the Minister to deal (as soon as Part III of the Act comes into operation by an Order in Council) on the first inspection with those most urgently in need of inspection.

(3) If after the expiration of six months from the date of the commencement of this Part of this Act any person—

(*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; 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 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.

A period of six months is allowed, after the date fixed by the Order in Council for Part III to come into operation for proprietors of independent schools to make an application for registration.

This subsection will act as a check on any new independent school being set up later on. If any such school is established *shortly after* Part III of the Act comes into operation it will not have the full period of six months available to apply for registration, but only such period after establishing the school as may remain of the six months following the date of this Part of this Act coming into operation.

If a proprietor (or intending proprietor) attempts to establish such a school, *after* the expiry of the prescribed six months, he will render himself liable from the date of the establishment of the school.

If desirous of opening a school it would be advisable to make application to the Registrar for *provisional registration of his prospective school before opening it.*

After the expiration of the six months referred to :—

No person may conduct an unregistered independent school (or one which is not provisionally registered);

If such a school be established or conducted, the proprietor will be liable on summary conviction :—

(i) to a fine not exceeding £20 (twenty pounds) on a first conviction;

(ii) on a second or subsequent conviction he is liable :—

(*a*) to a fine not exceeding £50; or

(*b*) to imprisonment for a term not exceeding three months; or

(*c*) to *both* such imprisonment and fine.

These liabilities to penalties also apply to any proprietor of a provisionally registered school who does any act *which might lead to the belief* that his school is a " registered " school.

(4) The Minister may make regulations 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.

Regulations may be made by the Minister which specify :—

(i) The particulars to be furnished to the Registrar by the proprietor of the school which he desires to have placed on the Register ;

(ii) Instruction that the proprietor must notify the Registrar of any *changes* in the particulars furnished at the time of application for registration ; and

(iii) The circumstances under which the Minister may order the name of a registered (or provisionally registered) school to be deleted from the Register if the Registrar is unable to obtain sufficient particulars concerning the school.

71. Complaints.—(1) If at any time the Minister is satisfied that any registered or provisionally registered school is objectionable upon all or any of the following grounds—

(*a*) that the school premises or any parts thereof are unsuitable for a school ;

(*b*) 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 ;

(*c*) that efficient and suitable instruction is not being provided at the school having regard to the ages and sex of the pupils attending thereat ;

(*d*) that the proprietor 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 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.

Section 71 (1) specifies definite types of unsatisfactory conditions which might be found to be existing in a registered or provisionally registered school. If the school be a residential school, the arrangements for boarding must be satisfactory, as well as the accommodation for education of the pupils.

The objectionable conditions may refer to the proprietor of the school or to any teacher in the school, to the instruction given in the school, or to the unsuitability of the accommodation and premises of the school.

(i) A notice of complaint, stating the grounds of complaint (with full particulars) must be served upon the proprietor *by the Minister.*

(ii) The notice must specify the measures necessary to remedy the matter complained of.

(iii) The notice must also specify the time which will be allowed to remedy things, such time being not less than six months.

Instead of the above suggestions for remedying the matters of complaint, the notice may state that the Minister is of opinion that the matter is not capable of a remedy (" irremediable.")

(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.

The remedies to be suggested under the last preceding subsection may have special references to the premises or to the education given in the school.

If the complaint referred to is that an individual teacher in the school is not a fit person to be a teacher in the school, the notice must give :—

(i) The name of the teacher complained of; and

(ii) the grounds of the allegation.

Also a copy of the notice must be served upon the teacher referred to as well as on the proprietor.

This will give the teacher concerned an opportunity to rebut the complaints if desirous of doing so.

N.B.—The points mentioned above in Subsect. (2) are included in the Act, because it has been found that teachers who, for some reason, have been deprived by the Board of Education of their recognition as teachers in grant-aided schools, sometimes have set up a private school, or secured an appointment in a private school. This will enable the Minister to check such a practice.

(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 under the provisions hereinafter contained.

The Sixth Schedule to this Act gives particulars of a Tribunal to be set up, to whom an appeal against complaints, such as are specified in Subsection 71 (1) above, may be made.

If an appeal to this Independent Schools Tribunal is to be made by the proprietor of an independent school, or by any teacher therein, the notice sent to the proprietor, and the copy of any notice sent to the teacher concerning whom a complaint is made, *must limit the time within which such an appeal may be made.* The time allowed must not be less than a month, so that the proprietor, or the teacher, may have time to prepare evidence in rebuttal of the complaint if they wish to attempt to defend their position.

72. Determination of complaints.—(1) Any person upon whom a notice of complaint or a copy of such a notice is served under the last foregoing section may, within the time limited by the notice, appeal therefrom by referring the complaint, in such manner as may be provided by rules made under this Part of this Act, to an Independent Schools

Tribunal constituted in accordance with the provisions of the Sixth Schedule to this Act.

(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, and after considering such evidence as may be tendered by them or on their behalf, have power—

(*a*) to order that the complaint be annulled :

(*b*) to order that the school in respect of which the notice of complaint was served be struck off the register :

(*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 :

Rules will be made as to the manner in which an appeal may be made to the Tribunal.

The Tribunal will consist of a chairman and two others. The chairman will be appointed by the Lord Chancellor from a " legal panel," which consists of persons possessed of such legal qualifications as the Lord Chancellor considers suitable for a chairman and who will be available when required as chairman of a tribunal.

The two other members of the Tribunal will be appointed by the Lord President of the Council from an " educational panel," which consists of persons who have had such experience in teaching, or in the conduct, management or administration of schools as the Lord President approves.

Officers of a government department and officers or employees of a L.E.A. are not includable in the educational panel (except teachers employed by a L.E.A.). (See Sixth Schedule.)

This Independent Schools Tribunal will afford to all parties concerned an opportunity of being heard.

After considering such evidence as has been tendered by them, or on their behalf, the Tribunal have power to make orders in connection with the complaint and the appeal therefrom.

Subsection (2) of Section 72 specifies in detail the kind of orders the Tribunal may make.

If the defence be successful :—

(i) The Tribunal may order that the complaint be annulled.

If the defence be not successful :—

(ii) The Tribunal may order that the school in question be struck off the register forthwith ; or

(iii) the Tribunal may order that it be struck off the register later, unless the remediable conditions complained of shall, with modifications (if any) be remedied to the satisfaction of the Minister within a time specified in the order.

N.B.—It may be noted that the L.E.A. have no power to interfere with an independent school. *The school is independent of the L.E.A.* It is the Minister who must approve the result of the remedy applied, but the L.E.A. may draw the attention of the Minister to any point in connection with the independent school which in their opinion is not satisfactory.

(*d*) if satisfied that the premises 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.

(iv) If the Tribunal are satisfied that the premises complained of, or part of such premises, are unsuitable for use as a school, they may order that the premises, or the specified part thereof, must not be used for a school; or

If it is the accommodation which is unsatisfactory, being inadequate or unsuitable, the Tribunal may order:—

(*a*) That the premises must not be used as a school for pupils exceeding in number the number specified in the order; or

(*b*) that the premises be disqualified for use for pupils of such age or sex as may be specified in the order; or

(*c*) if dormitory accommodation be unsuitable the order may specify that it shall not be used as a residential school, or only for a limited number of boarders.

If the Tribunal are satisfied that the proprietor or teacher complained of is not a fit person to be a proprietor or teacher in such a school, the Tribunal may disqualify the proprietor from being the proprietor of *any school*; or the teacher from being a teacher in *any school*.

(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 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.

If the proprietor of the school has not appealed to the Appeal Tribunal within the time named in the notice, the Minister may make any of the orders in connection with the matters complained of (which are given in the last subsection), which the Tribunal could have made.

Provided that *if a teacher has appealed* against disqualification, the Minister may not make an order dismissing that teacher, or disqualifying him, from being a teacher in such a school.

The teacher having appealed, will have the appeal heard, and he must be governed by the order which may be made by the Tribunal.

(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.

Any order of disqualification made either by the Tribunal, or by the Minister, *will* disqualify without appeal therefrom, for service either as proprietor, or teacher, of *any* school.

73. Enforcement.—(1) Where an order is made by the Minister or by an Independent Schools Tribunal directing that any school be struck off the register, the Registrar of Independent Schools shall as from the date on which the direction takes effect strike the school off the register.

(2) If any person uses any premises for purposes for which they are disqualified by virtue of any order made under this Part of this Act, that person shall be liable on summary conviction 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.

If the proprietor, or any other person, *uses any premises for purposes for which they are disqualified* by an order of the Tribunal (or by an order of the Minister), he will be liable on summary conviction :—

(i) To a fine not exceeding £20 (twenty pounds) ;

(ii) In case of a second or subsequent conviction (whether in connection with the same or other premises) :—

(*a*) To a fine not exceeding £50 (fifty pounds) ; or

(*b*) to imprisonment for a term not exceeding three months ; or

(*c*) to *both* such imprisonment and fine.

N.B.—Imprisonment, in such cases, may be considered as for " contempt of court " in not obeying the order of the court.

(3) If any person acts as the proprietor of an independent school, or accepts or endeavours to obtain employment as a teacher in any school, 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.

(4) No proceedings shall be instituted for an offence against this Part of this Act except by or on behalf of the Minister.

This subsection is intended to prevent a proprietor or teacher trying to evade the consequences of disqualification by an order of the Tribunal (or of the Minister). By this subsection they are precluded from obtaining or *even endeavouring to obtain* a post similar to that from which the order disqualified them.

The penalties for evading, or trying to evade, the order are similar to those in the last preceding subsection for the use of premises for purposes from which the order forbade their use.

The L.E.A. cannot take action or institute proceedings but they may draw the attention of the Minister to any apparent breach of the provisions of the Act or the orders.

74. Removal of disqualifications.—(1) If on the application of any person 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 remove the disqualification.

(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, appeal to an Independent Schools Tribunal.

If circumstances have changed, a person disqualified from being the proprietor of an independent school, or a teacher disqualified from serving as a teacher in such a school, may appeal to the Minister for the disqualification to be removed. Or a proprietor who has remedied matters connected with the premises previously complained of may ask for the disqualification to be removed.

If the Minister be satisfied, under the changed circumstances, he may by order remove the disqualification.

If, however, he refuses to remove the disqualification, the person aggrieved may appeal to an Independent Schools Tribunal, as in the original case when he (or the premises) became disqualified. The appeal must be made within such time limits as the regulations allow.

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, as to the manner of making appeals to such tribunals,

and as to proceedings before such tribunals 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.

The Independent Schools Tribunal will be constituted, and will act in, accordance with rules made by the Lord Chancellor, with the concurrence of the Lord President of the Council.

The rules will determine among other things :—

(i) The procedure for making an appeal against matters in connection with complaints ;
(ii) the place where the Tribunal will sit ;
(iii) the remuneration and allowances made to members of the Tribunal (with the concurrence of the Treasury) ;
(iv) the proceedings before such Tribunals ; and
(v) matters incidental to, or consequential on such proceedings.

(See Sixth Schedule.)

(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.

(3) Every order of an Independent Schools Tribunal shall be registered by the Registrar of Independent Schools and shall be open to public inspection at all reasonable times.

The findings of the Tribunal are final and not subject to arbitration. Under Section 70 the Register of Independent Schools will be open to public inspection at all reasonable times. Under this subsection every order of a tribunal must be registered and be open to public inspection at all reasonable times, but no authority is given here for copies of or extracts from such entries to be made.

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 shall 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.

This section may be considered as the "*parents' charter.*"

It was inserted during the report stage in the House of Lords to enunciate as a general principle that in the exercise and performance of all powers and duties conferred and imposed on the Minister and L.E.A.s that *the wishes of parents are to be considered.*

The parents' wishes must be considered, *among other things*, concerning :

(*a*) Section 8 (2) (*d*). The type of school at which the child may be educated, whether day school or boarding school.

(*b*) Section 50 (2). The religious persuasion of any family with which the child may be boarded.

(*c*) Section 37 (2). The school to be named in an " attendance order " made by the L.E.A.

(*d*) Section 44 (7). The preferences of the parent concerning employment or prospective employment of a young person on whom a college attendance notice is to be served.

But the L.E.A., in considering the wishes of the parent, must also consider whether education in accordance with these wishes will cause unreasonable public expenditure.

The following memorandum drawn up by Dr. F. C. Thomas, Director of Education for Leamington Spa, in connection with the " special place " examination of pupils in junior schools is suggestive :—

1. In the past the Special Places Examination has protected junior school head teachers against parents who have desired for their children more academic types of education than the heads would themselves have recommended. Even greater protection may be needed in the future, since the Butler Act appears to insist that parents' wishes are to be very fully considered, but does not seem to envisage very clearly a situation in which *the parents' wishes*, though held and expressed with vehemence, *are not in the best interests of the child or of the school* which they desire on its behalf. Further, in the initial stages there is the possibility at any rate in some areas that the necessary accommodation in schools of the grammar type may be inadequate.

2. Heads of post-primary schools would seem also to be in need of care and protection as well as their brethren in the junior schools. What is a head teacher to do when only one post-primary place is left and two junior school head teachers urge strongly, and with seemingly adequate justification, for two different children to fill it ? First, how is the head teacher of the grammar school to compare A's excellent record at one junior school with B's equally excellent record at another ? Secondly, once this decision has been made, *how is it to be justified to the parents whose expressed wishes have been flouted.*

3. One important contribution to a solution of these problems clearly lies in the compilation of cumulative records of *ability, attainment,* and *development* for every child from the moment of entering the nursery school or class. In this connection, of course, the word " development " must be taken in the widest possible sense as including both intellectual and character aspects. Although there may perhaps be room in this field for some variation from one primary school to another, yet it would seem important that both the basic form of report and the basic technique of record making should be carefully standardised.

4. The following substitute for the present form of examination is suggested as a means of overcoming the difficulties mentioned in paragraphs 1 and 2 above but the present writer is quite emphatic in his opinion that supplementation by cumulative records should be introduced, if gradually, as soon as practicable.

(*a*) Every child should perform an " intelligence " test soon after entering the junior school and the record should be kept.

(*b*) This test-result should be checked before, or at the beginning of, the child's last junior school year—earlier if for any reason the first result is suspected of not reflecting the child's true ability accurately.

(*c*) During the last junior school year the schools should administer internal examinations in the fundamentals of English and arithmetic. In order that the results should be comparable from one junior school or another they should " agree " to use the same (standardised) tests in these subjects. It may be presumed that it will be one of the functions of the Examinations Board to arrange this agreement.

(*d*) At the appropriate time the parents would be consulted, and where the head and the parents and the results of the four internal tests are all in agreement, the recommendation will be passed on to the head of the appropriate grammar, technical (?) or modern school. If too many applications were received in the years while provision may still be inadequate, the heads concerned would have some objective data which would help them to initiate the re-orientation of some applicants.

(*e*) In cases where the junior school head teacher's opinion and the results of the four internal tests were not in harmony with the parent's aspirations they would have their attention drawn to the test results and would be told that it was quite impossible to recommend for a grammar school type of education any child who had not done significantly better at this or that test. If the parents still insisted, a second function of the Examinations Board would come into play, and a sub-committee would interview them and make a final decision. In other words, the Examinations Board would continue to deal as at present both with policy, and with the actual placing of children, but in the latter sphere its activities would be confined to the controversial cases.

Miscellaneous Provisions

77. Inspection of educational establishments.—(1) In this section the expression " educational establishment " 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 institution maintained by a local education authority; 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.

See Note on Section 2 above *re* Inspection and Farm Institutes.

Here *educational establishment* is defined as including :—

(i) A school;

(ii) a county college;

(iii) any establishment under an approved scheme of further education, and used for such;

(iv) any training college, *or other institution*, maintained by a L.E.A.

The persons responsible for the management of any institution which is *not* included in this definition may request the Minister to cause an

inspection to be made of that institution. If this is done, that establishment shall, *for the purposes of that inspection*, be deemed to be also included within the above definition, and consequently officers of the Board may conduct such an inspection.

(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 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.

It is the *duty* of the Minister to cause inspection to be made of every educational establishment which may be either a routine inspection, or a special inspection.

This section has underlying it both the protective and the constructive sides of the work of the Minister.

The protective aspect may be gathered from the following:—

In 1860, the first "Code" stated: "The inspectors . . . are employed to *verify the fulfilment of the conditions on which grants are made*, to collect information, and to report the results to the committee of council."

But later experience showed that an inspector should become more than a mere reporter of compliance, or non-compliance, with specified conditions of State aid: a constructive side to the work was necessitated.

The variation in the types of educational institutions (especially after the 1902 Act) rceeiving State aid, in time necessitated inspectors of varied experience, qualified to act constructively, persons who could bring to bear on the problems of each kind of institution an experience drawn from a relatively larger area.

The history of English education has shown that inspection has done its most valuable work when it has attempted something larger than merely "to collect information and report results"—the improvement by criticism, advice and the transmission of information, of the methods of organisation and teaching in good and bad schools alike.

The new duties, or enlarged responsibilities of both the Minister and of the L.E.A., which are imposed by this Act will necessitate the appointment of many more inspectors (and assistant inspectors) by the Minister and by the L.E.A.s, and this subsection gives full authority to the Minister to do this for his part of the work, subject to any control of the Treasury as to the numbers to be appointed.

It is interesting to note that in 1839 the Committee of the Privy Council on Education had not an easy task in getting the consent of the Cabinet to the appointment of the first two inspectors. At that period it was thought

that *inspectors of factories were more necessary than inspectors of schools*. Further, as the schools were all voluntarily supported, the Church appeared to consider that such inspection was an intrusion on their ancient rights. In 1840 an arrangement was made that no inspectors of schools should be appointed without the concurrence and approval of the Church. (Up to 1876 the inspectors dealt not with schools or areas in *districts*, but with three *religious types* of schools, Church of England, Non-conformist, and Roman Catholic.) The Education Act, 1870, in Sect. 71 provided for the appointment of inspectors, without the concurrence or approval of the Church, and they were described as "*inspectors of returns*" but their duties included not only inquiry into the accuracy or inaccuracy of returns from schools, but "to inspect and examine the scholars in every such school," although Sect. 7 (3) of that Act, precluded inquiring into any religious instruction given in the school.

The following are some of the duties and responsibilities necessitating an increase in the number of inspectors under the present Act :—

(i) The new survey of county and voluntary school buildings ;

(ii) the detailed examination of the "development plans" prepared by the 146 L.E.A.s ;

(iii) some survey of the needs for the new compulsory services and the proposals to meet those needs :—

(*a*) Nursery schools and classes ;

(*b*) technical and modern secondary schools ;

(*c*) special schools ;

(*d*) county colleges ;

(*e*) other forms of further education, including farm institutes ;

(*f*) the greatly expanded meals service, and arrangements therefor ;

(*g*) extended arrangements for social and physical training (Section 53) ;

(*h*) additional work in connection with the training of the greatly increased number of teachers required to meet the needs of varied educational institutions ;

(*i*) inspection of independent schools.

Such varied types of work will need inspectors with differing qualifications and experience. In the ordinary inspections of schools attention may be directed to the methods of teaching, the way the classes are run, the standards of instruction given, and to those who give the instruction. This will be specially necessary for independent schools, if the proprietors are to be authorised to represent that *their school is of a sufficiently high standard of efficiency to merit the advertisement*, "The School is Inspected by the Board of Education," on which parents may place great reliance when selecting a school for their child. For the independent schools the financial inspection may be carried out in the offices of the Minister of Education by skilled persons who are capable of forming a correct conclusion concerning the financial arrangements of the schools.

Women inspectors were first appointed towards the end of the nineteenth century "to undertake inspection and inquiry into all matters especially needing the scrutiny and advice of a woman."

(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 appointed by the local education authority.

In addition to inspection of educational establishments by His Majesty's

inspectors, any L.E.A. may inspect, by their own officer, not only schools but any educational establishment *maintained by them.*

If a person not permanently employed by the L.E.A. is engaged to make a survey of buildings, for the purposes of the development plan for their area, for this particular purpose such persons may be deemed to be " officers " of the L.E.A.

(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 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.

Section 72 of the 1870 Act dealt with the refusal by manager or teachers to admit inspectors to their school. The penalty was non-recognition of such school as an efficient school. In this subsection the penalties for *obstructing any person authorised to make an inspection* are that the person so obstructing is liable on summary conviction to :—

(i) A fine not exceeding £20 (twenty pounds) ;

(ii) In the case of a second, or subsequent offence, to—

(*a*) A fine not exceeding £50 (fifty pounds) ; or

(*b*) to imprisonment for a term not exceeding three months ; or

(*c*) to *both* such imprisonment and such fine.

(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 otherwise than in accordance with an agreed syllabus shall not be subject to such inspection as aforesaid, but may be inspected under arrangements made for that purpose by the managers or governors of the school, or, in the case of a controlled school, by the foundation managers or foundation governors 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 of the dates fixed therefor shall be given to the local education authority.

Under this subsection all denominational religious instruction is to be inspected by the churches concerned, but " agreed syllabus " teaching is to be inspected by His Majesty's inspectors or by inspectors of the L.E.A.

This is a compromise which was agreed to by the authorities affected.

In 1870, when the " Forster " Act was under discussion in the House, there was a fear expressed by the Nonconformist members lest the State, by means of Her Majesty's inspectors, should endeavour to foster some

form of State-directed religion in the board schools created by the Act, and Section 7 (3) was inserted to prevent this. This stated :—

" The school shall be open at all times to the inspection of any of Her 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.*"

This prohibition was repeated in Section 27 (1) (*c*) of the *Education Act, 1921.*

Now that religious instruction, either of the denominational or the agreed syllabus type is compulsory in all schools the ban on inspection in religious subjects by H.M. inspectors is removed, but as mentioned they will not deal with denominational instruction. As regards inspection of religious instruction of the agreed syllabus type, this is restricted to persons *ordinarily* employed by the Minister in secular subjects or to officers in whole-time employment by the L.E.A.

The proviso is similar in content to the former Section 76 of the *Education Act, 1870*, but is wider in scope, as it refers to voluntary secondary schools, as well as to voluntary primary schools.

The procedure for this religious knowledge inspection is :—

(i) The managers, or governors, of a voluntary school must give 14 days' notice to the L.E.A., of their intention to hold such examination ;

(ii) In the case of a controlled school, this notice must be given by the " foundation managers " of a primary school, or the " foundation governors " of a secondary school ;

(iii) on the day, or days fixed, *being not more than two days in any year*, the school will be examined by their religious knowledge inspector. On such days the attendance registers will not be marked, nor can the L.E.A. exercise any control over the proceedings in the school.

Pupils who have been excused from attendance at religious worship, or instruction, in a voluntary school shall not be required to attend the school on a day fixed for religious inspection as stated in the following subsection (6).

(6) No pupil who has been excused from attendance at religious worship or instruction 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.

If a pupil is excused as mentioned herein, he cannot be dealt with under Section 40 of this Act as an absentee on the days of inspection.

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 local education authority make special arrangements for any child or young person to receive primary or secondary education otherwise than at school, the authority may provide for

the medical inspection or medical treatment of that pupil as if he were in attendance at a school maintained by the authority.

If for some special reason it is necessary to arrange under Section 56 of this Act, for a child or young person to receive primary or secondary education *otherwise than at school*, such arrangements may provide for the pupil to obtain the benefits of medical inspection and treatment, so that he will not be handicapped through lack of this health supervision, because he is not attending a school.

(2) A local education authority may, with the consent of the proprietor of any school in their area which is not a school 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, make arrangements for securing—

(*a*) the provision of milk, meals and other refreshment for pupils in attendance at the school; and

(*b*) the provision for any registered pupil 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 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 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 (being junior pupils or senior pupils) 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, 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.

Under this subsection the advantages of health inspection and medical treatment, the advantages of feeding in the schools and the advantages, if need be, of clothing is extended to independent schools or establishments by special arrangement, and *at cost price*, analogous, so far as health goes, to the arrangements for pupils being educated "otherwise than at school." The Act endeavours to provide for *all*.

It may be to the advantage to the proprietor to be able to have the feeding of his pupils (or their medical inspection) at the smaller price which it costs the authority (which deals with these matters on a larger scale than he could), but if the authority find that the proprietor is charging the

pupil more in his boarding fees than the cost to himself, when any agreement comes up for review, this point may be reconsidered, because these benefits are intended for the pupil, and not to be profit-making items for the proprietors of the school.

79. Supplementary provisions as to medical inspection and treatment. —Every local education authority shall furnish 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; and that Minister may give to any such authority such directions 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 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.

The *Ministry of Health Act, 1919*, changed the status of the "Local Government Board" (which had supervised the work of various local government authorities, including the audit of the accounts of L.E.A.s) to that of a Ministry.

This (1919) Act transferred the medical inspection and treatment of children, which had been developed by the Board of Education as part of the school medical service since its inception under the *Education (Administrative Provisions) Act, 1907*, to the Minister of Health, with power to make arrangements with the Board of Education to perform and exercise *his* duties and powers and to make grants *on his behalf* in this respect.

Section 16 of the *Education Act, 1921*, stated that "For the purpose of facilitating the effective exercise of the powers and duties of the Minister of Health relating thereto [schemes for medical inspection and treatment] the Minister may make arrangements with the Board of Education respecting the submission and approval of such schemes, and the powers and duties of the Minister may, under such arrangements, be exercised and performed by the Board [of Education] on *behalf of the Minister [of Health]*, and with his authority under such conditions as he may think fit."

These arrangements are at present in force.

Section 79 of this Act states that "*while such arrangements are in force* references to the Minister [of Education] shall be substituted for references to the Minister of Health in any requisition for information which that Minister may make. (See also Section 100 (2) and (3).)

The White Paper, "A National Health Service," issued in February, 1944, stated on p. 39 :—

Maternity and Child Welfare Services

"The ordinary functions of the maternity and child welfare clinics, concerned as they are with the convenient local provision of general advice and

care in the day-to-day bringing-up of young children and in the mothers' associated problems will not be transferred to the new joint authority (for health purposes) but will lie wherever the related functions of child education are made to lie under the new Education Bill. Under the proposals in that Bill as they stand now, this will mean that the county and county borough councils will be the authorities primarily responsible, but that arrangements will be made in suitable cases for delegating much of the practical care of the service to some of the existing authorities, within the counties, which have hitherto carried the responsibility and which have accumulated good experience and local interest."

School Medical Service

" In this service also the proposals (of the White Paper) 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.*

Page 64 of this White Paper, referring to the present position, states :—

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. (N.B.—Sir George Newman was the first Chief Medical Officer for both Ministries.)

80. Registration of pupils at schools.—(1) The proprietor of every school (that is to say in the case of a county school or voluntary school the managers or governors thereof) shall cause to be kept in accordance with regulations made by the Minister a register containing the prescribed particulars with respect to all persons of compulsory school age who are pupils 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, such periodical or other returns as to the contents thereof as may be prescribed.

(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 to a fine not exceeding ten pounds.

The proprietor of an independent school, and the managers and governors of all county and voluntary schools, *must* register the names and other prescribed particulars of all pupils of compulsory school age in attendance at their schools.

The Minister will make regulations concerning the registration of such pupils.

The regulations formerly required for every elementary school or department were:—

(*a*) A register of admission, progress, and withdrawal;
(*b*) Attendance registers; and
(*c*) A register of summaries.

The admission register was required to show distinctly for every scholar who has actually been present in the school:—

(*a*) His number on the register.
(*b*) The date of his admission (and re-admission)—day, month and year.
(*c*) His name *in full.*
(*d*) The name and address of his parent or guardian.
(*e*) Whether exemption from religious instruction is claimed on his behalf.
(*f*) The exact date of his birth—day, month and year.
(*g*) The last school he attended before entering this school. (If this is his first school the word " none " should be entered in this column.)
(*h*) If he has left, the date of his last attendance at *this* school, and the cause of his leaving.

The penalty for contravening, or failure to comply with, the regulations made by the Minister on summary conviction will be a fine not exceeding £10 (ten pounds).

Subsection (3) following gives some other particulars which will be dealt with by the regulations.

(3) The regulations made under this section shall prescribe the procedure by which a child may become a registered pupil and the procedure by which a child (not being a child with respect to whom a school attendance order is in force) may be withdrawn 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.

The regulations may arrange for children to be registered at the *beginning of the next term following the fifth birthday* of a child, instead of an infant being *compelled* to enter school on his fifth birthday which may be in the middle of a term.

The deletion of a pupil's name from the register of the school which he has attended requires special consideration. If the head teacher of a school removed the name of a child who had been absent for some time it might be possible for that child to miss a certain period of his education if he did not enter another school forthwith nor resume his education until discovered by the officers of the authority to where he may have gone to reside.

The regulations will prescribe *the procedure by which a child may be withdrawn from the school* and *his name deleted from the register.*

They will probably deal with cases such as death of the child, long prospective absence under medical order, or for convalescence after severe illness, or on leaving the district.

In the register there should be space for an entry of " date of leaving " and " reason for leaving."

Where the child has left the district the head of the school should notify the L.E.A. of the fact, and, if possible, give the new address of the child

so that the L.E.A. of the area to which the child has gone may be notified, and the child caused to enter a school there.

Co-operation between the attendance or inquiry officers of authorities has been very helpful in the past, but it should be compulsory for early notification of change of address to be made.

In the case of prospective long absence through illness, the name should be notified to the L.E.A. who would be able to *keep a record of such cases*, and by periodical visits of their officers, keep in touch with each case so that no pupil be lost sight of.

81. Power of local education authorities to give assistance by means of scholarships and otherwise.—(1) Regulations shall be made by the Minister empowering 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—

(*a*) to defray such expenses of children attending county schools, voluntary schools, or special schools, as may be necessary to enable them to take part in any school activities:

(*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:

(*c*) to grant scholarships, exhibitions, bursaries, and other allowances in respect of pupils over compulsory school age, including pupils undergoing training as teachers.

(*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 education authority before the date of the commencement of Part II of this Act.

This section covers a wide sphere of action for the L.E.A.

(*a*) deals with the education of pupils of compulsory school age. Section 53 (3) empowers the L.E.A. to provide clothing suitable for physical training at the school attended. Here their powers are extended so as to cover other expenses such as transport to inter-school matches, so that the pupils may take part in school activities. There is no reference here to "allowances" such as the L.E.A. were able to make in the past from their funds.

(*b*) deals with the payment of fees and expenses at fee-paying schools. Parliament has decided that fee-charging schools are still a desirable part of the system of education, and this power given to the L.E.A. will enable them to assist pupils to take advantage of the education there provided. This would authorise the L.E.A. to send boys or girls to some of the public schools as well as authorising payment of fees for some fee-charging school near the child's place of residence. (See reference in latter part of Appendix E to scholars being sent by an industrial firm to Trent College.)

(*c*) deals with assistance available for pupils *over compulsory school age*. At present a boy over 14 is not under an obligation to attend school. He may leave if his parents wish. If the parent be willing to allow the child to remain at school after 14, but cannot afford to do it without a *maintenance* allowance, it is in the child's interest that the L.E.A. should have power

to make such an allowance to pupils over compulsory school age. When the age is raised to 15 every child will be under an obligation to remain until 15, and this subsection does not empower the L.E.A. to make allowances to those between 14 and 15 to enable them to remain. A similar course will follow when the age is raised to 16. The child will be under a statutory obligation to attend school until 16. The question of maintenance allowances for children is linked up with the proposed national policy of " family allowances " and is not included in *this* Act.

The L.E.A. have a wide discretion here for those over compulsory school age. There is no prohibition on their giving assistance up to 100 per cent. to any student over compulsory school age, to secure any particular form of study whether it be technical or cultural, for which he appears to be fitted. This subsection, however, does *not* authorise the payments of certain fees for pupils who are articled to practitioners in a profession, as in, say, a solicitor's, an architect's, or an accountant's office. Nor will it authorise the granting of scholarships or maintenance allowances to *deaf persons* receiving vocational training from employers *in private places of business*, although a *blind* person may receive vocational training in an institution for the blind. (See also *Blind Persons Act, 1938*, in Appendix A.)

In the one type of case the money might go to the professional person, in the other cases it would go to the support of the training institution—an educational fee for the benefit of the recipient institution.

Students who study at a university for a degree in the Faculty of Law would be able to be helped, but a student articled to a solicitor, or reading in the chambers of a barrister, would not be eligible.

(*d*) is a clause added to prevent hardship through the lapse of a grant previously sanctioned. This allows for a continuance of any bursary or other allowance granted by a L.E.A. before the date of the coming into operation of this Part of this Act. Pupils at present receiving allowances may *continue* to receive such, but the L.E.A. have no statutory power to grant such allowances in future, *while the pupil is of compulsory school age.*

82. Powers of local education authorities as to educational research. —A local education authority may, with the approval of the Minister, make such provision for conducting or assisting the conduct of research as appears to the authority to be desirable for the purpose of improving the educational facilities provided for their area.

There is a growing recognition of the need for intensified research work in almost every department of the life of the nation. The present position of the organisation for research may be seen from *Scientific Research and Development* (Cmd. 6514, H.M. Stationery Office, 2d.).

Continued research is necessary in educational matters as urgently as in other material aspects of life.

Section 74 of the *Education Act, 1921*, gave local education authorities power to aid research.

According to the adage, " The wise man is he who profits by the other man's experience," the following particulars of some of my attempts at research may be suggestive to others :—

Appendix II of the Report of the Consultative Committee on *Psychological Tests of Educable Capacity* gives some account of a few items of research which

I have undertaken. One of the points therein mentioned refers to a test I made of a number of *Group* Intelligence Tests, *Testing the Tests* for uniformity of result. I obtained copies of eight sets of *Group Tests* (Terman Tests, Simplex Tests, Northumberland Tests, U.S.A. National Tests, etc.) and a set of 100 pupils from various schools worked through each of the eight tests and I spent the greater part of what was supposed to be my summer vacation in marking the eight hundred scripts, arranging the pupils in order of merit as each of the tests showed, in order to see if there was any uniformity in the placing of the pupils.

In one infant school the headmistress used the Terman *Individual* Tests for the pupils in her school and gave me the results attained for several years. It was remarkable how these indications of capacity before seven years of age agreed later with the selection of pupils at the Special Place Examination at 11+.

On another occasion I obtained the consent of the Board of Education under Sect. 74 of the 1921 Act to the appointment of an investigator for two years to work under my directions at a cost of £300 per annum. I wished to formulate some *Temperamental* Tests to use with Group *Intelligence* Tests. I persuaded the Education Committee to include £300 in the annual estimates (of which the Board would have paid £150) but the Town Council struck this item out of the estimates when they came before them for approval, so this experiment was not conducted.

On another occasion I carried out an experiment on the comparative costs of heating schools. I found that coke was the cheapest fuel, oil the next in order of expense, then gas, and finally electricity was the most expensive of the four. For the oil burning test, an oil-burning apparatus was fitted inside a boiler which could be taken out and coke used, if desired later. The flow of oil to the sprayer was controlled by an automatic thermostatic apparatus.

Other lines of research which L.E.A. might undertake would be :—

(*a*) What is the most economical and effective form of lighting—filament lamps or fluorescent lamps ?

(*b*) What is the best method of teaching infants to read ?

(*c*) What is the best method for teaching correct spelling ?

(*d*) To find the relative cultural value of secondary school subjects ?

(*e*) To develop *more reliable* tests for (i) general intelligence ;
(ii) persistence of effort ;
(iii) constructive imagination.

(*f*) What are the predisposing causes of juvenile delinquency ?

In the Notes on Section 8 above I have drawn attention to the work of the " Advisory Council of the Foundation of Educational Research."

The following list of projects upon which the Foundation is to be engaged has recently been put forward :—

(i) An inquiry into present methods of selection for secondary education ;
(ii) The ideal continuous pupils' Record Booklet ;
(iii) Improved tests of intellectual capacity of several *specific* types ;
(iv) The most suitable curriculum for the modern school ;
(v) The desirable content of specialised technical education ;
(vi) The collection of sociological and psychological evidence of the influence of evacuation upon individual character and ability ;
(vii) Improvements in rural education ;
(viii) The possible common curriculum for pupils of 11 to 13.

The comprehensive nature of the educational research to be undertaken here makes it such that each L.E.A. may, in accordance with Section 82 above, assist in the conduct of the research as " desirable for the purpose of improving the educational facilities provided for their area " by *annual research grants* to the above-mentioned or other foundation, in addition to any research work the L.E.A. may itself undertake.

83. Powers of local education authorities as to educational conferences.—Subject to any regulations made by the Minister, a local education authority 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.

Conferences are frequently held for the discussion of questions relating to education.

This section empowers the L.E.A. under regulations made by the Minister :—

(i) To organise such conferences ;
(ii) To participate in the organisation of such conferences ;
(iii) To pay for, or contribute to the cost of, such conferences ;
(iv) To pay the expenses of any person *authorised by them* to attend such conference.

The regulations may give instructions limiting the number of persons who may be authorised to attend a conference at the expense of the L.E.A., or specifying the conditions under which aid may be given for attendance at conferences abroad.

The *School Board Conference Act, 1897,* was formerly the only authority under which L.E.A.s defrayed the expenses of their members and officers in attending conferences dealing with elementary education. It was questionable whether there was any statutory authority to pay expenses in connection with higher education. Section 38 of the *Education Act, 1918,* was added to provide the necessary sanction with regard to both elementary and higher education.

Section 83 of this (1944) Act takes the place of previous sanctions therefor. It does not include the restrictions of the 1918 Act, that expenses for conferences outside the United Kingdom required the sanction of the Board of Education but the regulations may.

84. Power of local education authorities to make grants to universities and university colleges.—A local education authority 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.

See Notes on Section 82 above.

A Departmental Committee has been appointed by the Minister of Education 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 universities and technical colleges in this field.

The committee will meet under the chairmanship of the Rt. Hon. Lord Eustace Percy. The committee will not confine themselves to such matters as engineering and related sciences, but other important fields of research, including textile technology or the chemical industries will be brought under review with other cognate subjects.

The future relations between the universities and the more important technical colleges and institutions will be considered. As illustrations of the need for this the *Times Educational Supplement* for April 8th, 1944, mentions the following facts :—

"The major technical colleges in the area—Birmingham, Wolverhampton, Coventry, Rugby—still work independently of Birmingham University.

"Manchester University has a complete Faculty of Technology in the Municipal College of Technology, but apparently no close liaison with the Royal College of Technology at Salford, the Wigan Mining and Technical College, the Bolton Technical College, or the College of Further Education at Stockport; Leeds University seems to have little liaison with the Leeds College of Technology, and none with the Technical Colleges at Bradford and Halifax; Liverpool University has none with any of the technical colleges in south-west Lancashire or Cheshire; the technical colleges of Newport and Swansea have no direct connection with the University of Wales; Rutherford College, Newcastle, has none with the University of Durham."

To this list may be added the fact that neither the Harris Institute at Preston nor the new Blackpool Technical College have any *direct* connection with either Manchester or Liverpool Universities. To the subjects mentioned may be added: "What is the best training for technological experts?"

85. Power of local education authorities to accept gifts for educational purposes.—(1) Subject to the provisions of this section, a local education authority shall have power, and any such authority or any former authority shall be deemed always to have had power, to accept hold and administer any property upon trust for purposes connected with education.

Section 20 of the *Elementary Education Act, 1870*, authorised School Boards to purchase land for the purposes of that Act (sites for schools) and stated: The School Sites Act shall apply in the same manner as if the school board were *trustees* or managers of schools within the meaning of those Acts.

Section 22 of the same Act authorised the sale or lease of any land or a schoolhouse belonging to the School Board which was not required by such board.

Section 23 authorised the transfer of a (voluntary) school to a School Board, with provisions analogous to those included in the Second Schedule to this (1944) Act.

A question having arisen concerning transfer of school to which an endowment was attached, the *Elementary Education Act, 1873*, in Section 13, stated that a School Board shall be able *and be deemed always to have been able* to be constituted trustees for any educational endowment or charity for purposes connected with education—and to have and *always to have had power* to accept any real or personal property given to them as an

educational endowment or upon trust for any purpose connected with education.

These powers of the School Board passed automatically to the L.E.A.s which took over their powers and duties under the *Education Act, 1902*, and here we have a repetition of this statutory power continued to the L.E.A.s by this [1944] Act.

(2) A local education authority shall not, on or after the date of the commencement of Part II of this Act, be constituted trustees of any school for providing primary or secondary education other than a nursery school or a special school 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 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.

There is, however, a restriction on any wholesale acceptance of such powers as *trustees* in that the approval of the Minister is required for *future* acceptance of trusteeship.

If the L.E.A. is to become a body of trustees for a primary or a secondary *school* it will be necessary to consider this a proposal under Section 13 (1) (*b*) for the maintenance as a county school of a school which at the time being is not such a school, thus necessitating public notice.

(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.

Section 23 of the *Education Act, 1870*, concerning schools transferred to a School Board (now the L.E.A.), stated :—

" Every school so transferred shall, to such extent and during such time as the School Board have under such arrangement any control over the school, be deemed to be *a school provided by the School Board.*"

The Education Department on January 13th, 1874, stated :—

During the time in which a School Board have the control over any premises, the school which they carry on *is a school provided by the School Board*, and no religious catechism or religious formula which is distinctive of any religious denomination can be taught in that time.

If under the transfer the trustees, or former managers, retain for any time the control of the premises, the *purposes* to which these premises are to be put during such time *are not allowed to be stated* in the arrangement for the transfer, as the Education Department have no jurisdiction in that matter.

This subsection repeats the general principle underlying the above-mentioned earlier Act.

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 for the pupils in attendance at a voluntary school 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 that a scheme should be made under the Endowed Schools Acts, 1869 to 1908, 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 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.

Before the *Endowed Schools Act, 1869*, it was assumed that *religious instruction in a trust deed meant instruction according to the doctrines of the Church of England.* This was expressly stated in various cases which came before the courts. In the case of *Chelmsford Grammar School* (1855), 1 K. & J. 543, it was held that although there were no express denominational trusts expressed, yet looking at the condition of the country in the reign of Edward VI, when the trust was formed, religious teaching according to the doctrines of the Church of England *must have been intended.* Earlier, in the case of *A. G.* v. *Cullum* (1842), 1 Y. & C. 411, it was laid down that although in none of the charities concerned was there any express religious provision, any schemes dealing with these charities must provide for religious instruction according to the doctrines of the Church of England, that the teachers must be members of that Church, and that no other course of religious instruction should be adopted. The *Endowed Schools Act, 1860*, made some variation in this legal presumption, but later the *Endowed Schools Act, 1869*, provided in Section 9 for the appointment of commissioners to make schemes " in such manner as might render any educational endowment most conducive to the advancement of boys and girls, or either of them, *to alter and add to existing trusts*, and to make new trusts to replace existing trusts." Section 10 gave them power to alter the constitution, rights, and powers of any governing body. These very wide powers were made use of by the Endowed School Commissioners to change the general conditions under which hundreds of educational endowments had suffered, through restrictions in the original trusts. The only limitation of their powers was the requirement that in any scheme they made they " must have *due regard* to the educational interests of any class of persons." The *Endowed Schools Act, 1873*, further stated that they must have " due regard to the interests of persons in a particular class of life " whose educational advantages were abolished or modified."

This enabled representatives of schools or persons which had previously benefited by an endowment to appeal if a scheme proposed by the commissioners should transfer the benefit of the endowment elsewhere.

The presumption, that educational foundations are of a Church of England character, was changed by the Endowed Schools Acts, and the requirement was substituted that there must have been an express prescription by the

original trusts *and* continued usage of this type of religious education.

By the *Endowed Schools Act, 1874*, the powers and duties of the Endowed School Commissioners under the Endowed Schools Acts were transferred to the Charity Commissioners.

(See also Note on Section 86 (4) later.)

Powers for dealing with the constitution of the governing body of, or with the religious instruction at, any school, wholly or partly maintained out of the endowment of *any cathedral or collegiate church*, without the consent of the Dean and Chapter were excluded.

The *Board of Education Act, 1899*, and the Orders in Council made thereunder, transferred these wide powers from the Charity Commissioners to the Board of Education. (See Note on Section 2 (2) above.)

In accordance with Section 121 of this (1944) Act, the Board of Education Act was repealed and the powers formerly held by the Endowed Schools Commissioners passed from the Board of Education to the Minister as from 10th August, 1944, the date declared by His Majesty in Council to be the date on which the first appointment *under this Act*, of Mr. Butler as Minister of Education, took effect.

Section 86 of this Act will add to the powers passed on in the way referred to above, and will enable the Minister to deal with difficulties which might otherwise prevent the trustees from making the best use of some particular educational endowment. This section is intended 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.

At present there are two legal difficulties in the way of the reorganisation of Church of England elementary schools.

First, their trusts are normally *restricted to a particular parish* and this prevents their use for the establishment of a voluntary secondary school in some neighbouring parish for over-11 pupils, including those from that particular school to which the trust relates.

The Minister, under this section, may by order direct that an endowment for some particular parish may be applied in aid of other schools and not be restricted to the school to which it was applicable originally.

Secondly, many of the sites have been given under the *School Sites Act, 1841*. Section 2 of that Act provides that if land granted under that section ceases to be used for the purposes of that Act, it shall immediately "*revert to and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid,* as fully to all intents and purposes as if this Act had not been passed, anything herein to the contrary notwithstanding." (See Appendix A.)

As a result of this danger of reversion of the site on disuse, the trustees of many redundant and obsolete schools cannot apply proceeds from a sale of the site towards building new schools where they may be more necessary.

For some cases in connection with the *School Sites Act, 1841*, see Ikin and Sparke, *Compendium of Precedents and Judgments*, pp. 359-387, also for "Historical Notes" by the author on Various Acts in connection with "School Sites" see pp. 563-566 of the same volume.

(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 educa-

tional 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 School Sites Act, 1841 (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.

This subsection shows how the Act proposes to deal with one of the difficulties referred to in the previous note.

In order to disencumber educational sites of the existing rights of the heirs of the original grantors under the reversion clause, it is proposed, where such reversionary rights exist:—

(i) That due inquiry be made to find the person to whom the land would revert.

If the owner of the reversion cannot be found after due inquiry, the Minister will make an order that the proviso to Section 2 of the *School Sites Act, 1841*, shall not have effect in relation to the land which had been granted formerly as a site for a school.

(ii) If the person entitled to the reversion be found, it will be necessary to obtain his consent to relinquish his rights. If he refuses this consent, even if compensation be offered, it *might* be necessary to introduce legislation to deal with such cases and to make the reversionary rights *compulsorily* extinguishable, with compensation therefor, and that the *Arbitration Acts, 1889 to 1934* shall apply to the amount of compensation.

If he consents to relinquish his rights, the Minister will make an order as in (i) above, that the proviso to the 1841 Act shall not apply in relation to that land.

(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.

After issuing an order that the proviso to the 1841 Act shall not apply to the land or site in question, the Minister may include in the scheme, made under his Charity Commissioners powers, arrangements for the payment of the agreed compensation for relinquishment of rights out of the proceeds of the sale.

(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.

(5) In this section, the expression " educational endowment " has the meaning assigned to it by section five of the Endowed Schools Act, 1869.

The Sections herein referred to—

Sections 5 and 29 (defining an educational endowment), with Sections 34, 35, 36 and 39 of the *Endowed Schools Act, 1869*, dealing with the scheme making powers of the Endowed Schools Commissioners; also Sections 12, 13 and 16 of the *Endowed Schools Act, 1873*, are included in Appendix A later.

The powers of the Endowed School Commissioners were transferred to the Charity Commissioners in 1874, and these again were transferred to the Board of Education by Orders in Council. (See Note on Section 2 (2) above.)

The Order in Council dated August 11th, 1902, provided as follows :—

For the purposes of the transfer effected by this Order :—

(*a*) In all enactments and instruments, provisions relating to the powers transferred shall be construed as if reference to the Charity Commissioners and their officers (except the Official Trustees) were references to the Board of Education and their officers, and shall have effect as if everything required to be done, to, by, or in relation to the Charity Commissioners and their officers (except the Official Trustee) were required to be done, to, by, or in relation to the Board of Education and their officers.

(*b*) The report required by Sect. 16 of the *Endowed Schools Act, 1873*, to be made to the Committee of Council on Education shall be made to His Majesty the King.

The powers of the former Endowed School Commissioners are now transferred to the Ministry of Education which has power to deal with scheme-making as described in the Endowed Schools Acts.

In the Act of 1869, a period of *three months* was allowed for objections to schemes, but this length of time was apt to delay the schemes and in the Act of 1873, Section 12 reduced this period to *two months*.

Now, in order to prevent undue delay in the making of schemes, by Section 86 (4) above, this period is hereby further reduced to *one month*.

N.B.—The Endowed Schools Acts were intended to be temporary only

in operation. Special powers were given for making schemes and these powers when exercised were intended to have terminated, but they were continued on by the *Expiring Laws* Continuance Acts until they were made permanent by the *Expiring Laws Act, 1922.* (See Appendix A.)

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 (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 of land or of personal estate to be laid out in the purchase of land if the land or the income thereof is to be used for educational purposes.

The *Mortmain and Charitable Uses Act, 1736,* according to the preamble thereto, was passed " on account of the great increase in the alienations made by languishing and dying persons to the *disinherison of their lawful heirs.*"

Under this Act :—

(1) *All assurances to corporations* (e.g., ecclesiastical corporations) *were made void,* unless made under a Licence in Mortmain ;
(2) All assurances to charitable uses (including educational) must be executed in the presence of two witnesses, and must be enrolled ;
(3) All such assurances were void if made within six months of the donor's death ; and
(4) All gifts *by will* to charitable purposes of *any interest in land* are void.

During the nineteenth century various classes of charities were from time to time exempted from the provisions of that Act.

The Law of Mortmain was codified and consolidated in the *Mortmain and Charitable Uses Act, 1888.* Section 6 of this Act contained provisions exempting assurances of land for the purposes of an elementary school from certain provisions of the Act, but this exemption was very limited in scope and applied *only to elementary schools.* See *Harrow School Governors and Murrays Contract, etc.,* [1927] 1 Ch. 556.

When Edward I came to the throne the first years of his reign were occupied mainly by his efforts to establish a really effective administration (following the unsettled reigns of his grandfather and father, John and Henry III). Among other changes he persuaded his Parliament in 1279 to pass a *Statute of Mortmain* (de religiosis). This was an Act to prevent the further accumulation of land in the " dead hand " of religious persons and communities. The more land the Church acquired, the less feudal taxation came into the royal exchequer. The Church was an undying body which paid the king neither " reliefs " (death duties) nor fees on wardship or marriage, and the property would never escheat to the King for want of an heir. The Statute of Mortmain forbade any man to alienate land without a licence from the King.

Other Acts were passed later to check a practice which was introduced by some ecclesiastics, who were well acquainted with Roman Law. A *Use* or *Trust* was created by which an estate could be conveyed to a friend, on the understanding that they should retain the use (i.e. the actual profit of the estate). A *use* was free from all the incidents of feudal tenure, so if the use of land was granted to the Church, the Statute of Mortmain was evaded. To check this, the *Statute of Uses, 1535,* was passed which nullified to some

extent the effect of a Use. Later the *Statute of Charitable Uses, 1601,* gave to the Court of Chancery additional powers to correct abuses in connection with endowments for *Charitable* objects (including educational objects).

The *Bill of Rights, 1688,* in its endeavours *to limit the powers of the King,* deprived him of the power to grant licences in Mortmain. Seven years later however the *Mortmain Act, 1696,* restored this power of granting such licences. The preamble to this 1696 Act drew attention, among other things, to the " advantages to learning of founding, and granting lands to, colleges and schools."

There were a large number of endowments of schools created during the forty years following the passing of the 1696 Act, and this may have led to some extent to the conditions referred to in the preamble of the 1736 Act, above mentioned, where it is the " disinherison of heirs " rather than loss of feudal dues which was being affected.

N.B.—More than one-third of the *endowed* non-classical schools existing in England in 1840 were founded during the seventy years preceding the passing of the 1736 Act (*Digest of Schools and Charities for Education* presented to Parliament in 1840).

The *Mortmain and Charitable Uses Act, 1891,* amended the 1888 Act and made it possible for land to be left *by will* to charitable purposes, subject to the land being sold within the period of a year, unless retained, *with special sanction* for actual occupation for purposes of the charity. (If not sold it was to be vested in the Official Trustee of Charity Lands.)

Section 46 of the *Education Act, 1918,* exempted *assurances for educational purposes* from any restrictions of the law relating to Mortmain and Charitable Uses, and this exemption is continued here in this Act.

(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, shall, if the land or the income thereof is to be used for educational purposes, be void 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 avoided, as the case may be.

In order that a check might be kept on these gifts to charitable uses, Section 4 (*a*) of the *Mortmain and Charitable Uses Act, 1888,* required the assurance to be enrolled in the central office of the Supreme Court, following the precedent of the 1736 Act.

The provision here in subsection (2) is that a copy of the " assurance " *must be sent to the Minister* within six months after the date on which the assurance takes effect, or *the assurance will be void,* although the Minister may extend the period of six months if he thinks it advisable. This takes the place of the enrolment under the 1888 Act and by (3) below the Minister will cause a record to be kept of assurances so registered.

(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.

(4) In this section, the expression " assurance " has the meaning assigned to it by section ten of the Mortmain and Charitable Uses Act, 1888.

(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.

By Section 10 of the *Mortmain and Charitable Uses Act, 1888* (the Act which consolidated the law of Mortmain), " *Assurance* " includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every assurance by deed, devise, will or other settlement.

ADMINISTRATIVE PROVISIONS

88. Appointment of chief education officers of local education authorities.—The duties of a local education authority with respect to the appointment of officers under the provisions of the Local Government Act, 1933, shall, without prejudice to the generality of those provisions, include the duty of appointing 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 prohibiting his appointment.

The *Local Government Act, 1933*, provided for the appointment of various local government officers. Section 98 of that Act made compulsory the appointment of a " clerk of the county council " ; Section 102, a county treasurer ; Section 103, a county medical officer of health ; Section 104, a county surveyor ; Section 105 deals with " *other officers* considered necessary."

Section 106 states that the council of every borough shall appoint fit persons to be town clerk, treasurer, surveyor, medical officer of health and sanitary inspector or inspectors, and shall also appoint such " *other officers* as the council think necessary."

The chief education officer (if any) was presumably included under the term " other officers." Now it is compulsory for the county or county borough council (as L.E.A.) to appoint a fit person to be the chief education officer. The provisions of the 1933 Act include the statement that *the council shall pay to the officer such remuneration as they may determine* and *every such officer shall hold office during the pleasure of the council.*

This Act endeavours to ensure the partnership between the L.E.A. and the Minister and here endeavours to secure that there shall be a competent liaison officer with the authority making arrangements.

The L.E.A. proposing to make the appointment of a chief education officer, will submit *a short list* of the names of the people proposed to be interviewed to the Minister, who will indicate to them if there is any person on that list to whom he takes such objection as to think he ought not to be given the appointment. It *may* not be the best policy to merely notify the L.E.A. that some particular name on that list be struck off. The course of procedure would probably be, if the Minister desired to advise a name be taken out of the list, someone connected with the L.E.A. would be invited to come up to the offices of the Minister and the particular name would be discussed with them. This is the administrative procedure or practice which has generally been adopted in the past when the council have been dealing with the appointment of a medical officer of health, or chief constable or county engineer responsible for the roads.

The L.E.A. will then consider the remaining names on the list with the knowledge that the Minister feels that any one of those persons may be suited to the needs of the locality, if in the wisdom of the authority appointing him, he is considered, after interview, as acceptable.

This section will satisfy demands which have been put forward in the past that the post of chief education officer is not less important than those specifically mentioned in the 1933 Act, and also may assist the claims of teachers who express the opinion that any administrator appointed as chief education officer should have had experience of educational work.

89. Remuneration of 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 and teachers respectively, and it shall be the duty 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 make such provision as appears to him to be desirable for the purpose of securing that the remuneration paid by local education authorities to teachers is in accordance therewith.

(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.

This section gives statutory authority to the Minister to appoint one or more committees to advise on the remuneration of teachers. The remuneration of teachers is to be considered by a body of persons constituted by the Minister which is representative of local education authorities and of teachers. The bodies or committees will make recommendations as to scales of salary mutually agreed upon. These recommendations will be considered by the Minister and *if he approves of the scales of salary suggested, this section gives the Minister power to make regulations with the object of securing that L.E.A.s pay their teachers in accordance with such scales.* This will remove some of the difficulties which have been experienced in the

past when it was *optional* for each L.E.A. to accept recommendations made.

Committees of this type were first set up by Mr. Fisher in 1919 with the view of securing greater uniformity of salary scales, to remove the anomalies caused by so many scales of salary being in operation in the country, and to put an end to the unnecessary but growing rivalry between L.E.A.s, for those authorities which offered the highest scale of salary had a better choice of applicants. Viscount Burnham was appointed chairman of the committee. Ultimately three committees were formed, one to deal with salaries of teachers in elementary schools, one for salaries of teachers in secondary schools, and the third for salaries of teachers in technical schools and colleges.

Owing to the changes embodied in this Act, Mr. Butler has reconstituted these Burnham committees. There are now two " Burnham " committees. One committee (" Burnham Main Committee ") will deal with the salaries of teachers in primary schools, secondary schools and county colleges. The other (" Burnham Technical Committee ") will deal with the salaries of teachers in technical (including technical and art), colleges and schools.

The Technical Committee, while not a sub-committee of the Main Committee, will transmit its recommendations to the Minister *through the " Main Committee "* which will thus have the opportunity of adding any comments or considerations that it may wish to put forward.

Each committee will consist of two groups of representatives (called up to the present " panels," but see note on the Sixth Schedule as to the use of that word) : the local education authorities' " panel " and the teachers, " panel." Each Burnham committee will have an independent chairman nominated by the Minister. On the death of Lord Burnham, Lord Soulbury, a former President of the Board of Education, was appointed as chairman, but the name " Burnham " was retained as the title of these representative committees. Sir Henry Pelham, a former Secretary to the Board of Education, has been appointed as vice-chairman.

The Act maintains to a great extent the present arrangements :—

(i) The Burnham Committee frames the scales ; and

(ii) The Minister approves or rejects them.

Also the Burnham Committee appoints as its chairman a person nominated by the Minister.

But in so far as the Minister approves the scales he can now make it mandatory on L.E.A.s to pay teachers in accordance therewith.

On 28th March, 1944, during the Committee Stage of the Bill in the House of Commons, an amendment was moved, " After the words ' in approving such scales the Minister shall,' to add the words ' *not differentiate between men and women on the grounds of sex and shall.*" The Minister pointed out that this amendment would mean that the present arrangements for agreement between authorities and teachers on scales of salary would be affected, if the Minister had to prescribe to a Burnham Committee that there *must be equal pay* for women and men that the Committee *must not* differentiate between salaries for men and women teachers or he could not approve the scales. If he were to give such instructions to these representative committees it would be restricting their freedom of negotiation and would upset the free negotiating machinery of the Burnham Committees which has worked so successfully for the last 25 years.

On a division the amendment was adopted by 117 votes to 116.

This was really a defeat of the Government. The Prime Minister (Mr. Churchill) stated, shortly after, that a defeat of the Government raised a grave constitutional issue, and *the next vote on this subject must be taken as a vote*

of confidence in the Government. It would have grave consequences abroad, just at this particular moment, if it were thought that the Government had lost the confidence of the House. On 30th March, when consideration of the Education Bill was resumed in Committee, the usual motion "*that the clause, as amended, stand part of the Bill*" was defeated by 425 votes to 23. This gave the Prime Minister the vote of confidence which he considered to be so necessary, just at the time when arrangements were being made for a "second front" to be undertaken.

When the Bill came before the House on the Report Stage the Section was reinserted without the words of the amendment which had been intended to ensure equal pay for men and women. Later it was re-worded in its present form.

Additional Note (a pre-Burnham scale).

Early in 1919 I formulated Scales of Salaries for Blackpool Teachers. These were adopted in April, 1919, by the Blackpool Education Committee, payments being made in accordance therewith from 1st April, 1919.

The Scale for Certificated Assistant Masters was taken as the pivotal standard scale, scales for all other teachers being related to this. The maximum of this scale was £300 per annum.

(*a*) The salary of a head master of even the smallest school was £20 more than that of an assistant master with similar length of experience. Head teachers of larger schools (4 grades according to numbers *on the roll*) were proportionately greater;

(*b*) The salary of mistresses were fixed at *four-fifths* of the salary of masters similarly situated as regards position and length of service;

(*c*) Graduates in the Blackpool Grammar School were to receive £50 per annum above the salary of a certificated assistant master of the same length of experience;

(*d*) Teachers in the Palatine Central School were to receive £20 per annum above that of teachers in other elementary schools.

This central school I hoped would be recognised by the Board as a *Secondary School of the Technical type*, but although many pupils therefrom passed the School Certificate Examination, including Mathematics, Mechanics and Manual Instruction in their examination subjects, the officers of the Board did not encourage this idea. [See Preface.]

(*e*) Each teacher was to be paid according to his or her years of service *wherever rendered* and each teacher was placed at his correct position on the scale.

This was one of the first scales to pay each teacher *according to length of service* WHEREVER RENDERED (instead of only a small number of increments being allowed for service elsewhere).

Following this I drafted a motion which was tabled by the Blackpool Education Committee for the Annual Meeting of the Association of Education Committees to be held in June, 1919. This motion recommended that the Board of Education should fix *national scales of salaries* to remove the anomalies due to over 300 L.E.A.s each fixing their own scales, and the richer authorities with higher scales attracting some of the best qualified teachers. Others were moving in the same direction and for this same meeting the Executive Committee of the Association tabled a motion with a similar object, but recommending that, instead of *the Board* fixing scales themselves, the Board should call a *conference of representatives* of Associations concerned with the administration of Education and representatives of the recognised Teachers' Associations, with a view to the early preparation of national scales.

At the Annual Meeting of the Association the Blackpool motion was withdrawn, and Alderman John Collins, J.P., the Chairman of the Blackpool Education Committee, seconded the motion of the Executive, which was proposed by Sir Percival Sharp, B.Sc., LL.D., at present Secretary to the Association of Education Committees.

As a result, Mr. Fisher, the President of the Board, called a conference as suggested. Ultimately a Joint Committee of representatives concerned with administration with representatives of recognised Teachers Associations was formed, and Mr. Fisher appointed Viscount Burnham as an independent Chairman.

This Committee was thenceforward called the " Burnham Committee."

In November, 1919, the Burnham Committee issued as a first scale one *which was almost identical with the Blackpool Scale which had been adopted some months before the Burnham Committee was appointed.*

(*a*) The scale for certificated assistant masters with a maximum of £300 per annum was taken as the pivotal central scale on which scales for other teachers were based ;

(*b*) Salaries of head masters were based on those of certificated assistants, schools being graded ;

(*c*) Mistresses were to receive *four-fifths* of the salary of masters with similar positions and length of service ;

(*d*) Every teacher was to receive salary according to his or her years of service *wherever rendered.*

Later the Burnham Committee issued improved scales, and the Board of Education, to encourage their adoption by L.E.A.s, agreed to pay 60 per cent. of teachers' salaries.

There was one point in which the first Burnham Scales differed from my recommendation in the Blackpool scales—the salaries for secondary school teachers were referred to a separate Burnham Committee to deal with the payments to teachers in these schools, instead of being *based on* the scale of certificated assistants.

Now that Mr. Butler has appointed a " Main Committee " to deal with scales for both primary and secondary school teachers, it is probable that salaries for graduates in secondary schools will include some fixed amount above that for certificated assistants (*similar* to the £50 per annum addition on the Blackpool Scale of 1919), but the amount to be paid above the certificated teachers will be a matter for agreement between the representatives of administrators and of teachers.

The recommended Burnham scales were subject to their acceptance by the constituent bodies of authorities and teachers represented on the Committee, and by the Board of Education for purposes of grants.

In future the Ministry can make the scales mandatory.

Sir Percival Sharp has recently published a series of brief interesting articles in " *Education* " entitled " *The Burnham Committee* : *Its origins and bits of its History.*"

It is hoped that these articles will be published later in pamphlet or book form.

In *Reade* v. *Brearley* (1933), 17 Tax Cases, 687, where a head master of a Roman Catholic school, under the laws governing its constitution, was not allowed to receive any material benefit for himself and did not, in fact, receive any such benefit, it was held that although, to satisfy the requirements of the Board of Education, a written agreement was entered into, whereby he purported to be appointed as head master at a salary of £800, his office (upon the particular facts) was not an office or employment for profit, for the purposes of Income Tax.

90. Compulsory purchase of land and other dealings in land by local education authorities.—(1) A local education authority may be authorised by means of an order 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 or college which is, or is to be, maintained by them, 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, 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 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 of the school, would have fallen to be borne by the managers or governors.

Section 161 of the *Local Government Act, 1933*, deals with the compulsory purchase of land by means of an order confirmed by the Minister of Health. This Section 90 enables the Minister of Education (in the place of the Minister of Health) to confirm an order for the compulsory purchase of land required for educational purposes.

A "compulsory purchase order" must be in the prescribed form and must describe by reference to a map the land to which it applies. It must incorporate the *Land Clauses Consolidation Act, 1845* (except Sections 92 and 27 to 132 and, if the Minister so determines, Section 133).

Further, Sections 77 to 85 of the *Railways Clauses Consolidation Act, 1845*, must be incorporated.

See also the Sixth Schedule to the *Local Government Act, 1933*, for modifications of some sections of these Acts.

Before submitting the order to the Minister the L.E.A. must:—

(i) publish full particulars of the proposed order in local newspapers; and

(ii) serve notice on every owner, lessee and occupier (except tenants for a month or less) of the land proposed to be compulsorily purchased, specifying the time within which, and the manner in which, objections thereto can be made.

If no objection is duly made by the persons entitled to receive notice, and who have received notice, or if all objections received are withdrawn, the Minister may if he thinks fit confirm the order, with or without modifications. In all other cases the Minister before confirming the order must cause a local inquiry to be held. (See Section 93 below for particulars of a local inquiry.)

After confirmation of the order by the Minister, the L.E.A. must give public notice (by advertisement) of the fact that the order has been confirmed, and the order will become operative *from the date on which notice of its confirmation is published in local newspapers.*

If any person is aggrieved by a "compulsory purchase order" and desires to question its validity, he may, within two months of the publication of the notice of confirmation, make application for the purpose to the High Court. Subject to this, a compulsory purchase order shall not, either before or after its confirmation, be questioned by an order of prohibition, or an order of certiorari or in any legal proceedings. Nor may

an appeal to the House of Lords from a decision of the Court of Appeal in such cases lie, except by leave of the Court of Appeal. (See Section 162 of the *Local Government Act, 1933.*) This power of compulsory purchase applies to a site outside the area of the L.E.A. purchasing, but if a site be selected outside the area it will be advisable to ascertain what are the town planning restrictions on that land.

Section 20 of the *Education Act, 1870,* gave a school board power to purchase compulsorily land for a site for a school to be maintained by the board. Section 21 of the same Act referred to the purchase of land by voluntary school managers by agreement but *expressly excepted the purchase of land otherwise than by agreement.*

The *Education Act, 1936,* for the first time gave a L.E.A. powers to exercise compulsory purchase on behalf of the promoters of voluntary schools. The L.E.A., under Section 8 (6) of that Act, were authorised, but not compelled, to purchase land and permit it to be used, and to convey it to the managers of a proposed *senior* elementary school, provided that all expenses of, or incidental to, the purchase were first repaid to the authority.

Section 90 here empowers the L.E.A. to purchase compulsorily any land required for the purposes of a school or college or other establishment *maintained by them.* This includes voluntary educational establishments as well as county educational establishments, and repeats the power of the 1936 Act. It is, however, wider in its scope. It is not restricted to the compulsory purchase of a site for a senior school but would include sites for all types of schools—land "*required for the purposes of any school or college.*"

If the purchase of the land is for the use of the L.E.A. the conveyance should be made to *the corporation.*

(*a*) In an administrative county the county council is a corporate body having a seal. It consists of the chairman, the county aldermen and the county councillors.

(*b*) In a borough which is a city, and the mayor is entitled to bear the title of Lord Mayor, the corporation consists of the Lord Mayor, aldermen and citizens of the city.

(*c*) In the case of any other borough which is a city, the corporation consists of the mayor, aldermen and citizens of the city.

(*d*) In the case of any other borough which is not a city the corporation consists of the mayor, aldermen and burgesses of the borough.

(*e*) A Joint Education Board is also a corporate body with a seal. (See Part I of the First Schedule to this Act.)

The municipal *corporation* of a borough may act by the *council* of the borough, but the *council* is not legally the *corporation.*

In *in re Leeds Instituteand the Leeds City Council,* [1909] 1 Ch. 500, a question was raised whether a conveyance of property, belonging to the Institute, to the local education authority, should be made out to the Leeds City Council or to the Lord Mayor, Aldermen and Citizens of the City of Leeds. It was held that the *latter was a corporation* and *the council was not a corporation* and that the conveyance should be made out to the Lord Mayor, Aldermen and Citizens of Leeds.

Voluntary promoters who desire to acquire land, and who find the price unreasonable or the owner unwilling to sell, can go to the L.E.A. and ask them to promote a compulsory purchase order and thus place the voluntary promoters in exactly the same position that the L.E.A. itself would be in.

The Minister will not confirm the order for the compulsory purchase of

land for the purposes of a voluntary school unless he is satisfied with the financial arrangements made between the L.E.A. and the promoters.

Care must be taken as to whom the land is to be vested in, if purchased by the L.E.A. on behalf of the managers or governors of the prospective new school. In some C. of E. cases a school site may be vested in the diocesan board of finance, in others in school trustees. See also Note on Section 53 *re* Ownership.

The L.E.A. must secure that the expenditure to be borne by the L.E.A. does not include expenditure which would have been borne by the managers or governors if the managers or governors (or the body acting for them) had themselves purchased the land.

(2) Section one hundred and sixty-three of the Local Government Act, 1933 (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.

(3) Sections one hundred and sixty-four and one hundred and sixty-five of the Local Government Act, 1933 (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.

These subsections are not new, but include modifications necessary to bring them into line with the *Local Government Act, 1933.* (See Appendix A.)

91. Accounts of councils of county boroughs and audit thereof.—The council of every county borough shall keep separate accounts 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, 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.

The council of a county borough must keep *separate accounts* of the sums received and expended by them in the exercise of their functions as the L.E.A. for the county borough (i.e., separate from their accounts for other local government functions).

The accounts must be made up to March 31st each year, and are subject to audit by the district auditor of the Minister of Health.

Formerly the accounts of local government bodies were under the supervision of the Local Government Board, but when this board became raised in status to a Ministry by the *Ministry of Health Act, 1919*, this Ministry took over the functions of the former Local Government Board, including the auditing of such accounts.

If any expenditure is incurred by the L.E.A. for which they have no statutory authority, or if the Education Committee should incur expenditure which has not been authorised by minute of the council (the L.E.A.) this expenditure will be disallowed.

The district auditor will surcharge any sum disallowed upon the person responsible for incurring or authorising the expenditure. (If a Borough Finance Committee allows such unauthorised expenditure the members of the finance committee who signed the cheques *may* be the persons surcharged.) The auditor will also surcharge any sum which has not been duly brought into account, upon the person by whom that sum ought to have been brought into account. Further, he will surcharge the amount of any loss or deficiency upon any person by whose negligence the loss or deficiency has been incurred.

Circular 1 : (August 15th, 1944) of the Ministry of Education in paragraph 6 states :—

(*d*) The Act will necessarily involve considerable changes in the form of authorities' estimates and accounts and the necessary revision of the existing returns (including the Statutory Education Account) is in hand.

The following extract from a memorandum accepted by the Kent County Council on the financial organisation of a Local Education Authority for a *county area and the divisional executives* in that area may be *suggestive* when arrangements are under consideration in other *county* areas, but are not necessarily for adoption in every detail :—

" The inclusion in the county area of the areas which are now autonomous for elementary education will increase this county authority's financial work by approximately 50 per cent. There will be further increases resulting from the developments in education envisaged by the Act. The need for an efficient financial system is self-evident and the increase in volume of work alone would necessitate reorganisation. The nature of the problem requires that the authority's financial system should be unified. This does not mean that all the work must be centralised. It should be carried out either at the head office or at the divisional executive offices according to the nature of the work and the most economic and efficient way in which it can be performed. The delegation of work to divisional executive offices must be within the unified system as a whole and must not lead to the setting up of numerous relatively small self-contained units.

Financial control should be exercised at all stages : it should be exercised as budgetary control by the county council and the education committee, and in a more detailed form by the divisional executives and the officers of the authority.

The magnitude of the financial transactions indicates that, if total figures are to be prepared promptly and economically for the authority's estimates, accounts and returns, a considerable degree of mechanisation will be needed. To reap the full benefits of mechanisation, centralisation of a substantial portion of the financial work is necessary, but none the less, there is a large amount of detailed work which could with advantage be delegated to the divisional offices. Each divisional office should therefore have a finance branch with an adequate trained staff, who, like other members of the office staff must be in the direct employment of the authority. Whilst the divisional

education officer must have responsibility for the general efficiency of the finance branch of the divisional office, it is essential that financial should be separated from executive functions in order that there may be effective internal check.

An adequate audit staff attached to the head office will be necessary to ensure a continuous audit of all transactions, both divisional and local, and to ensure liaison between parts of the authority's financial system."

A memorandum accepted by the Hertfordshire County Council states :—

"The Education Committee should control expenditure by the Divisional Executive Committee by means of annual estimates prepared in detail on behalf of the Divisional Executive Committee and approved by the Education Committee.

The general practice of the county council, with the one exception of public assistance, is that all accounts are paid by the county accountant. Generally, salaries and wages are also paid by the county accountant except where imprest accounts have been given to head teachers, etc., for the payment of wages locally. Whilst this principle that payment in all cases should be made by the county accountant, there would be an advantage in the use of an administrative district for a representative of the county accountant to be accommodated at the divisional executive office for the purpose of advising the Divisional Committee on all financial matters and acting as a liaison between that committee and the county accountant."

The following paragraph in the same Memorandum may be compared with the Kent Memorandum dealt with in the Notes on Part III of the First Schedule :—

Administrative Staff.—It is important that administrative and clerical staff should be appointed by the county council after consultation with the divisional executive. Local government as a whole suffers from the immobility of its staff and it must be possible to transfer them about the county should occasion require it.

Men of the highest qualifications are needed for the service and they will be only forthcoming if they are assured of the prospects of promotion and of opportunities within the larger county area.

More recently Sir Percival Meadon, the Director of Education for Lancashire, prepared a Memorandum suggesting, as an interim arrangement, that the county be divided into 43 Divisional Executive areas (27 Part III Authorities in the area of the administrative county will cease to function).

Among the suggestions he makes for dealing with the accounts are the following :—

(i) In cases where the L.E.A. has delegated the power to pay accounts (and the L.E.A. may desire to do this in the case of the former Part III Areas), the Divisional Executive to comply with any requirements of the L.E.A., with reference to the form of accounts and as to the costs and records to be kept ; all charges appearing in the accounts to be supported by appropriate expenditure vouchers and to be certified by the Divisional Officer ; all income to be credited in the accounts ; the accounts to be kept on the basis of income and expenditure and to be available to officers of the L.E.A. for all purposes, including internal audit ; a statement of income and expenditure for the year together with balance sheet, to be submitted to the L.E.A. not later than June 30th following the end of the financial year to which it relates ; the L.E.A. shall, after making from time to time payments on account, up to 90 per cent of the approved estimated expenditure, to the Divisional Executive to enable it to discharge its approved liabilities, make a final payment after the end of each financial year.

(ii) In cases where the L.E.A. has not delegated the power to pay accounts, claims for liabilities and accounts duly passed for payment by the Divisional Executive and certified by the Divisional Executive Officer to be forwarded to the L.E.A. at monthly intervals for payment.

92. Reports and returns.—Every local education authority shall make to the Minister such reports and returns and give to him such information as he may require for the purpose of the exercise of his functions under this Act.

This section makes it the duty of the L.E.A. to supply the Minister with such reports and returns and give other information which the Minister may require in connection with his functions under this Act. There is no sanction or penalty referred to *here*, but the Minister can use financial pressure if he considers it necessary.

Under Section 72 of the *Education Act, 1870*, if the managers of a school, or a teacher therein, refused to fill up the forms required to be sent in to the education department, the school would lose its recognition as a school giving efficient elementary education, with possibly a consequent loss of grant for the school.

If the " School Board " refused to send in returns the President of the Education Department should cause two other persons to be appointed *by the vestry* to make the returns. He could request the overseers to call a vestry meeting and appoint two.

Under Section 118 of the *Education Act, 1921*, the Board of Education could make regulations concerning the payment to L.E.A.s out of moneys provided by Parliament and a failure of a L.E.A. to carry out the duties under the Act might lead to a reduction of grant.

Similarly, under Section 100 (3) of the present (1944) Act, the Minister may make regulations whereby the making of payments by the Minister is dependent upon the fulfilment of conditions specified in the regulations.

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; and the provisions of subsections (2) (3) (4) and (5) of section two hundred and ninety of the Local Government Act, 1933, shall have effect with respect to any such inquiry as if the Minister were a department for the purposes of that section.

Section 93 authorises the Minister to cause a local inquiry to be held where necessary. Section 156 of the *Education Act, 1921*, gave full particulars of the procedure for the holding of a local inquiry by the Board of Education. As, however, such inquiries are " local government " inquiries, the Board of Education rules of the 1921 Act were not repeated in this Act. It was thought more desirable that there should be a " standard form " of conducting these inquiries which would apply over the whole range of subjects with which local authorities are concerned. With this object this section gives the Minister power to cause a local inquiry to be held in accordance with the provisions of Section 290 of the *Local Government Act, 1933.*

That section is given in Appendix A below.

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 or of any enactment relating to the employment of children or young persons

the registrar having the custody of the register of births and deaths 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, 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.

Under Section 25 of the *Education Act, 1876*, a person requiring evidence of age might obtain a copy of a child's birth certificate at a fee not exceeding one shilling, if required for any purpose connected with *elementary* education, or employment in labour of the child, provided the prescribed form of application were used.

Section 134 of the *Factory and Workshop Act, 1901*, reduced the maximum fee to sixpence, provided the certificate referred to a child or young person under the age of 16, and the certificate was required for any purpose connected with employment in labour or *elementary* education.

As these copies of certificates are issued in pursuance of an Act of Parliament they do not require a revenue stamp, such as a copy of a marriage certificate may require. (*They* are exempt under the Stamp Act.)

In *Rex* v. *Rogers* (1915), 79 J.P. 16, it was held that in proceedings before a court where a birth certificate is used as proof of age, the child or young person must be identified with the entry on the birth certificate.

In *Rex* v. *Bellis* (1910), 6 Cr. App. Rep. 283, it was held that proof that the child or young person has always been treated as the person mentioned in the certificate may be sufficient evidence of age.

The Registrar may not make any charge for a form of requisition, but shall supply this free of charge. The fee of sixpence is for the copy of the entry in the Register of Births, which he certifies, and not for the form of application.

This section is wider in its application than former Acts. The cheap form of certificate was not available for purposes of higher education, nor for persons over 16. Now such certificates may be obtained if required for *any of the purposes of this Act* (primary secondary or county college), as well as in connection with the employment of children and young persons.

There is nothing in the Registration of Births and Deaths Acts to prevent a cheap birth certificate obtained under one Act, being used for the purposes of another Act, for which cheap certificates are obtainable.

Sect. 5 of the *Young Persons (Employment) Act, 1938*, authorises cheap certificates being obtained for the purposes of that Act.

(2) Every registrar shall supply to a local education authority 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 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.

(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.

The preceding subsection (1) deals with copies of individual entries. This subsection deals with particulars of the entries in the register which the L.E.A. may require the registrar to supply to them or their officers.

It is essential that the L.E.A. should have particulars of the date of birth of each child and young person in their area, so that they may keep a record of all children of compulsory school age, and of all young persons who must attend a county college.

Similarly, the L.E.A. should have the date of death of children of compulsory school age, or the death of young persons of age for compulsory attendance at their college. This will be necessary to enable the L.E.A. to have the names of such removed from the school or college register.

In some cases there is an arrangement between the L.E.A. and the registrar that he shall keep a *duplicate* Register of Births which he hands over to the L.E.A. annually (or quarterly if desired) charging twopence (or such other fee as may be arranged) for each entry therein. This enables the superintendent inquiry (or attendance) officer of the L.E.A. to note when each child will become of compulsory school age and act accordingly. It will also enable a medical officer of the authority to note when each child in the area will become 2 years of age.

The registrar may also supply, at suitable intervals, particulars of the entries in the Register of Deaths of all children and young persons.

95. Provisions as to evidence.—(1) Where in any proceedings under this Act 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, and satisfies the court that having used all reasonable diligence to obtain evidence as to the age of that person he has been unable to do so, then, unless the contrary is proved, the court may presume that person to be under, of, or over, the age alleged.

This subsection may be specially useful in cases where, through enemy action, records in an area have been destroyed, and the registrar cannot supply copies.

(2) In any legal proceedings any document purporting to be—

(*a*) a document issued by a local education authority, and to be signed by the clerk of that authority or by the chief education officer of that authority or by any other officer of the authority authorised to sign it;

(*b*) an extract from the minutes of the proceedings of the managers or governors of any county school or voluntary school, 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 or young person at a school or at a county college, and to be signed by the head teacher of the school or college ; or

(*d*) a certificate issued by a medical officer 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 subsection shall be evidence of the matters therein stated.

Section 3 of this Act deals with the authenticity of documents issued by the Minister or by officers of the Ministry, with his authorisation.

This section deals with the acceptance as evidence in any legal proceedings of particulars connected with local government.

(i) Documents issued by the L.E.A. will be accepted if signed by :—
The clerk of that authority ; or
The chief education officer ; or by
Any other officer of the authority *authorised to sign* such.

(ii) Extracts from minutes of proceedings of managers or governors of a school will be accepted if signed by :—
The chairman of the managers or governors ; or
The clerk to the managers or governors.

(iii) A certificate of attendance at a school or county college will be accepted as evidence if signed by :—
The head teacher of the school or college.

(iv) A certificate issued by a medical officer of the authority will be accepted if signed by :—
Such medical officer of the authority.

When such a certificate or document be presented in legal proceedings it will be deemed to have been signed by the person by whom it purports to be signed, *unless it should be proved that it has not been signed by such person.*

The *Evidence Act, 1938*, deals with the admissibility of documentary evidence as to facts in issue : " Documents," means books, maps, plans, drawings and photographs. " Statement " means any representation of fact, whether made by words or otherwise.

96. Provisions consequential on cessation of functions of former authorities.—(1) If upon the application of a former authority the Minister is satisfied with respect to any property which was immediately before the date of the commencement of Part II of this Act held by that authority for the purposes of functions exercisable by them under the Education Acts, 1921 to 1939, 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 would be inexpedient, the Minister may by order direct that the property shall be deemed not to have been transferred by virtue of section six of this Act to the local education authority for the county in which the area of the former authority is situated.

Under Section 6 of this Act *all* property, held by a L.E.A. which dealt with elementary education only, is to be transferred on the appointed day to the council for the county within which the former authority's area was situated

This subsection was added to the Bill during the Committee Stage to exempt from transfer property such as had been left to a former authority by the action of distinguished citizens and other people who clearly desired that the property should remain in local hands. When it is proved that there is such property, this will remain in the possession of the district council and not be passed on to the county council. In some cases generous benefactors in the district have assisted in the establishment of technical institutes and buildings of that description. At a time when there was only the whiskey money and the product of a 1d. rate available from public funds for such educational buildings, without such local help these particular services might never have been supplied to the town. This subsection will enable such institutions to remain with the local authority to whom they were originally devised. In answer to a question, the Parliamentary Secretary said 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.

(2) Where any question arises as to whether any officers, property, rights, or liabilities, 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.

This subsection gives the Minister power to act as the arbitrator when a question arises as to whether property, as referred to in the preceding subsection, has been transferred on the appointed day or whether it still remains in the possession of the district council. Questions may arise as to whether property was held by the former authority " solely or mainly " for the purposes of any functions which the district council exercised under the Education Acts, and consequently was transferred on the appointed day under Section 6 above, or if it was not so held, and consequently was not so transferred. (See Note on Section 6 above.)

Similarly, some officers who were only partly employed in educational work : were *they* transferred on the appointed day ? or do they remain as officers of the district council ? (e.g., officers on the borough treasurer's staff, or the borough architect's staff, who dealt with accounts or plans for other council activities as well as for educational work).

(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 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.

(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 make provision for that adjustment.

Financial adjustments are here proposed to be made between the former education authorities and the new education authorities (the county councils) on account of the transfer of property, rights, and liabilities. In some cases loans will have been raised by way of creating a mortgage, and in other cases by the issue of stock and the repayment of loan and interest thereon. These have been made a charge on the general rate funds of the former local authorities.

Doubts were expressed in committee whether, although the Minister has power to deal with the local authorities, he has power to deal with *persons* who have advanced money on mortgage with the general rate fund of the borough as security, or who have subscribed to the stock on the same security. In such cases monies may be paid by the council for the county to the council of the county district with whom the mortgage had been made, or which had issued the stock and *they* would be in a legal position to deal with the cases.

(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.

This subsection provides for the substitution of the new L.E.A. (the county council) for the former education authority as parties to any proceedings pending with respect to property, rights or liabilities, which by this Act are transferred to the new L.E.A.

This section enables the new L.E.A. to take over any cases before the courts.

97. Modification of 2 & 3 Geo. 6. c. 94.—For the purpose of the application of the Local Government Staffs (War Service) Act, 1939 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 has, in order to undertake war service, ceased to serve

in the capacity of an officer employed by the council of a county district for the purposes of any functions exercisable by that authority under the Education Acts, 1921 to 1939; 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, 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 for the county in which the county district is situated shall instead of the council of the county district be the "appropriate authority."

Section 97 transfers to the County Councils the obligation (imposed on the former L.E.A.s for elementary education only, by the *Local Government Staffs (War Service) Act, 1939*) to reinstate their officers who have undertaken war service.

Subsection 96 refers to transfers of liabilities generally, which would include reinstatement of officers and teachers, but Section 97 makes the point clear that no person formerly serving as an officer of the former authority shall suffer through having entered on war service.

In this section the former authority is designated as the "*council* of a *county district.*"

For the *Local Government Staffs (War Services) Act, 1939*, and the *Reinstatement in Civil Employment Act, 1944*, see Appendix A.

According to Section 305 of the *Local Government Act, 1933*, the word "officer" includes a servant. Therefore any person, whether he be a salaried officer of the former education authority, a teacher, a school caretaker, or an assistant school caretaker in receipt of an emolument from the local education authority, he is an "*officer*" *for the purpose of this Act.*

See Note on Section 120 (4) for officers employed solely or mainly for purposes in connection with duties under the *Children and Young Persons Act, 1933.*

98. Compensation of persons prejudicially affected by this Act.—(1) If in consequence of the extinguishment or transfer by this Act of any functions exercisable by the council of any county district, or the transfer by this Act of any officers employed by any such council, any person who immediately before the date of the commencement of Part II of this Act, was an officer employed by that council or by the council of the county in which the county district is situated suffers direct pecuniary loss by reason of the determination of his appointment 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 under this subsection from the local education authority 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, 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 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.

This section enables compensation to be paid out not only to existing officers of county district councils whose functions with respect to education will pass to county councils, but also to existing officers of county councils to whom the functions will be so transferred, officers who may suffer loss by reason of the transfer of the functions. The L.E.A. may be taking into their organisation a number of former officers of the district councils. Some of these officers may be more experienced than some of the employees of the county council and therefore the county council may wish to put the new employees from the district councils into positions previously occupied by their own employees and this section provides that officers of the county council so displaced would be entitled to compensation.

It is proposed to introduce a Bill to provide for the compensation of persons who, although formerly officers of county councils or county district councils, *are engaged on war service at the date of transference of powers*, in so far as these officers are insufficiently covered by the *Reinstatement in Civil Employment Act, 1944*. The special Bill will apply not only to officers in the *educational* service of counties but also to those who are concerned with functions appropriate to the *Food and Drugs* (*Milk and Dairies*) *Bill*, and the *Agriculture* (*Miscellaneous Provisions*) *Bill*, as these will be affected by generally similar circumstances, and some of them may be entitled to compensation.

See *Compensation of Displaced Officers* (*War Service*) *Act, 1945*.

See Note on Section 120 (4) below for officers employed " solely or mainly " for purposes in connection with the *Children and Young Persons Act, 1933*.

In accordance with Section 305 of the *Local Government Act, 1933*, " emoluments " includes all salary, wages, fees, poundage and other payments made to an officer as such for his own use, including the money value of any apartments, rations or other allowances in kind pertaining to his office, but does not include payments for overtime, or any sum paid to him to cover travelling expenses, cost of office accommodation, assistance of deputies, or clerical, or other assistance.

Section 150 (2) of the *Local Government Act, 1933*, states :—

(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."

Section 150 (3) of the *Local Government Act, 1933*, states :—

" 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."

In the above subsections of this (1944) Act the expression " existing officer " means for the purposes of this Act, any person who immediately before the coming into operation of Part II of this Act (Section 6 (4)) (i.e., before the 1st April, 1945), was an officer employed by a council, which was the L.E.A. for elementary education only, in a non-county borough or urban district, which, on that date, ceases to function as a L.E.A., in addition to some officers of the county council as referred to above.

The Fourth Schedule of the *Local Government Act, 1933*, gives the procedure for claiming compensation, the general conditions for determining whether compensation is payable to an officer, and if so, the amount of the compensation. In determining these questions regard must be paid to :—

(*a*) The conditions upon which the appointment was made ;
(*b*) the nature of the office ;
(*c*) all the other circumstances of the case.

Compensation may be awarded either—

(*a*) by way of an annual sum, or
(*b*) by way of a lump sum representing the capital value of such an annual sum.

N.B.—The payment of a lump sum by way of compensation, is a purpose for which a local authority may borrow.

The usual scale of compensation payable under the Fourth Schedule of the *Local Government Act, 1933*, is similar to that of the Treasury Rules made under Section 7 of the Superannuation Act, 1859 :—

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 office, together with a *special addition to compensate for the loss* under the following scale :—

Under 5 years' service	... ...	1/60 of the above amount.
5 years and less than 10	... ...	3/60 „ „ „
10 years and less than 15	... ...	5/60 „ „ „
15 years and less than 20	... ...	7/60 „ „ „
20 years and upwards	... ...	10/60 „ „ „

Provided that in any event the compensation shall not be more than 40/60 of the amount of the loss.

Thus an officer with 18 years' service would receive as compensation 18/60 of the loss, together with an addition (on account of the loss) of 7/60, i.e., 25/60 (or 5/12) of the loss.

In calculating the number of years service, any portion of an unexpired year shall be treated as a complete year if it exceeds six months, and if it does not it shall be ignored, i.e., 18 years 5 months will be treated as 18 years, while 18 years 7 months will be treated as 19 years. (See Appendix A, for the reprint of the Fourth Schedule of the 1933 Act.)

(2) If in consequence of any school becoming a special agreement

school or a controlled school, or in consequence of the discontinuance within six years after the passing of this Act, of any school maintained by a local education authority, 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.

When a voluntary school becomes a special agreement school, or a controlled school, the teachers cease to be under the control of their former managers so far as appointment and dismissal are concerned. Appointments and dismissals are under the exclusive control of the L.E.A., with some variations in the case of " reserved " teachers.

If a teacher be dismissed by the L.E.A. *in circumstances in which he would not have been dismissed by his former managers*, the question of compensation may arise, or if by regrouping of schools to form a special agreement school, or a controlled school, a head teacher becomes an assistant with diminution of salary, compensation will be due.

This subsection further includes the discontinuance of a school with loss of office as grounds for compensation *if the discontinuance takes place within six years after the passing of this Act.*

Where compensation is payable it will be calculated as mentioned in the Notes under the last subsection.

(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, 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 within the meaning of the Local Government Staffs (War Service) Act, 1939, 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.

See Appendix A for a copy of the Fourth Schedule of the 1933 Act.

Paragraph (*c*) of this subsection ensures that war service, by either

an officer or a teacher employed by a L.E.A., shall be reckoned, for compensation purposes, as a period of service in his office, also that the emoluments which are taken into account in assessing the amount of compensation, will be deemed to be such payments from the L.E.A. *as he would have received if he had not been engaged in war service.* This latter point covers " scale increments " which would have been due during his period of war service had he remained in civil employment.

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, or the managers or governors of any county school or voluntary school, have failed to discharge any duty imposed upon them by or for the purposes of this Act, the Minister may make an order 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.

The Minister has no power to dissolve or replace a L.E.A. *which has been elected by the people,* but he can use financial pressure in case of failure to carry out some of the duties.

In the case of an unsatisfactory School Board, under Section 63 of the *Elementary Education Act, 1870,* the elected board could be defaulted, and a board could be set up of persons nominated by the Education Department.

Sir G. W. Kekewich (formerly Secretary to the Education Department), in his " *The Education Department and After,*" on p. 169 relates a case of this kind :—

> " A Board in a rural district, consisted mainly or entirely of farmers, who were elected on pledges, not to enforce attendance, but to get the children out of school to work in the fields, as much, and as soon as possible. They wanted cheap labour. **I turned them out.** A Board was nominated from a number of persons selected by the inpector of the district, who explained that he had based his selection as much on physical as educational qualifications, as *he expected that the new Board would have to fight their way to the School Board offices.* One of his selections was a retired policeman of exceptional stature, thew, and muscle, who the inspector thought would be a well qualified leader of the new School Board in the mêlée that was likely to ensue !
>
> The expected difficulty did not however occur, and the result of the procedure was altogether satisfactory."

The above-mentioned section of the 1870 Act was repealed by the 1902 Act as the remedies therein could not be applied conveniently to county and borough councils, and Section 16 of the 1902 Act took its place. That section empowered the Board of Education, where the L.E.A. failed to fulfil any of their duties under the Education Acts, after holding a public inquiry, to make such order as they think necessary or proper for the purpose of compelling the L.E.A. to fulfil their duty, and any *such order may be enforced by mandamus.* (See Note on subsection (3) below.)

Here Subsection 99 (1) of this Act is wider in its scope than the 1902

Act, as it refers not only to L.E.A.s but to the managers and governors of county or voluntary schools who have failed to discharge the duties imposed upon them by or for the purposes of this Act.

If the Minister is of opinion that the managers or governors of a voluntary school are failing to carry out their obligations under this Act he may proceed against them eventually by mandamus. It could then be decided by the courts whether the managers or governors have fulfilled their obligations or not.

(2) Where it appears to the Minister 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, 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.

This gives the Minister power where there is no *properly constituted* body of managers or governors—

(i) to make such appointments as he thinks desirable to secure that there is a properly constituted body of managers or governors; and

(ii) to validate any acts or proceedings of the managers or governors which he considers are invalid or otherwise defective through the default of the person responsible for the body of managers or governors being an imperfectly constituted body.

The Minister could act under this subsection if the foundation had not appointed the necessary number of foundation managers or governors, or had appointed a number of foundation managers or governors in excess of number authorised by this Act, or by the articles of government.

(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 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 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 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.

This subsection reproduces the subject matter of the *Education (Local Authority Default) Act, 1904.*

The 1902 Act placed the duty of maintaining all the necessary public

elementary schools in an area on the newly created L.E.A. for that area.

The question of the teaching of Anglican or Roman Catholic doctrines in schools was so abhorrent to some at that time that a number of persons refused to pay that proportion of the education rate which they considered to be due to the support of voluntary schools, and became " passive resisters." (Many of those have now become more tolerant.) The individual " passive resisters " were dealt with by the ordinary legal processes (by distraint), but there were some of the newly created L.E.A.s who refused to exercise their powers and duties so far as those related to aiding and maintaining voluntary schools.

Managers of schools whose costs of maintenance should have been paid by the L.E.A. appealed to the Board of Education. Recognising that *remedy by mandamus might be inconvenient, lengthy and expensive*, the 1904 Act mentioned above was passed. Section 1 (1) (*b*) of that Act authorised the board, where managers had incurred expenses (e.g., on salaries of teachers) for which provision should have been made by the L.E.A., to " pay to the managers such amount in respect of these expenses as in the opinion of the board was properly incurred."

Any sums so paid by the board might be recovered from the L.E.A. as " a debt due to the Crown " and without prejudice to any other remedy might be deducted from any sums payable to that authority on account of parliamentary grants. (Section 1 (2) of the 1904 Act.)

This financial action of the Board proved a satisfactory means of enforcing the provisions of the 1902 Act. Section 99 (3) of this 1944 Act extends this method of enforcement to secondary, as well as primary, voluntary schools.

An example of delays in enforcing by *mandamus* is shown in the case of *R.* v. *The Guardians of Keighley Union.* The Guardians did not agree with the policy of vaccination of children, and refused to direct their vaccination officer to take proceedings against parents who had not had their children vaccinated. The Local Government Board (whose Regulations the Guardians refused to carry out) had the Guardians before the Court in May, 1875. A rule *nisi* was obtained for a *mandamus* commanding the Guardians to give the directions necessary. As they did not act, the rule was made absolute. Six of the Guardians stated that as they were in a minority they could not pass the requisite resolution. The majority tried to excuse themselves on the grounds that they personally objected to vaccination. A peremptory writ of *mandamus* was issued against the Board. In February, 1876, a resolution was passed in obedience to this writ, but in the following May this resolution was rescinded. Again a rule *nisi* was obtained against the eight who had voted for rescission, to show cause why an attachment should not issue for *contempt of court.* Ultimately, in August, 1876, the defendants were arrested and imprisoned in York Castle. They remained there for about a month, when the other members of the Board having passed the necessary resolution, they were released on their own recognisances of £1,000 each and one surety, until the sheriff surrendered them to the custody of the court. At the court, in November, 1876, the Guardians, who had been imprisoned for contempt of court, agreed that they would not be parties to any other rescission of the resolution, and were allowed to leave the court, on agreement to be bound by their own recognisance of £1,000 each, and to come up to the court again for sentence, if the law were disobeyed again by them. This delay from May, 1875, to November, 1876, illustrates one example of difficulty in enforcing by *mandamus.*

(See also now Section 7 of *Administration of Justice (Miscellaneous Provisions) Act, 1938,* in Appendix A.)

FINANCIAL PROVISIONS

100. Grants in aid of educational services.—(1) The Minister shall by regulations make provision :—

(*a*) for the payment by him to local education authorities 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 of pupils ;

(*b*) for the payment by him to persons other than local education authorities 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 ; and

(*c*) for the payment by him, for the purpose of enabling pupils to take advantage without hardship to themselves or their parents 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, and of sums by way of scholarships, exhibitions, bursaries and other allowances in respect of pupils over compulsory school age including pupils undergoing training as teachers.

Previous sections of the Act have dealt with the powers and duties of Local Education Authorities, and with the powers and duties of the Minister, acting together as partners in providing for the educational necessities of the nation.

To carry out their duties the Local Education Authorities obtain funds from local rates, or by borrowing, combined with exchequer grants. The statutory powers of a L.E.A. for raising funds are as follows :—

Section 183 of the *Local Government Act, 1933,* states :—

(1) A county council shall have power to issue precepts for the levying of rates to meet all liabilities falling to be discharged by the council, for which provision is not otherwise made.

Section 186 of the *Local Government Act, 1933,* states :—

The council of a borough shall have power to levy rates to meet all liabilities falling to be discharged by the council for which provision is not otherwise made.

But Section 85 (1) of the *Local Government Act, 1933,* states :—

A local authority may delegate to a committee any functions exercisable by the local authority . . . except the power of levying, or issuing a precept for, a rate, or of borrowing money.

In accordance with the last section quoted, paragraph 8 of Part II of the First Schedule to this Act states :—

(8) A local education authority may authorise 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 Similarly, the proviso to paragraph 8 of Part III of the First Schedule to this Act precludes a county council from authorising a " divisional executive " to borrow money or raise a rate.

If a Joint Education Board be formed by the union of two or more

councils which are Local Education Authorities, this Joint Board will be the L.E.A. for the areas of those councils, and each council, by the union, will in fact have delegated all its powers as a L.E.A. to the Joint Board. The order forming the board, in accordance with Section 293 of the *Local Government Act, 1933*, may apply to the Joint Board (subject to any necessary modifications) any of the provisions of that Act.

But there is no reference therein to any power to delegate the power of borrowing money or of raising a rate to a Joint Board. Apparently this power is retained by each of the constituent councils.

The order made by the Minister under Part I of the First Schedule of this Act *will*, in accordance with paragraph 3 (*a*) of that Part, *determine the manner in which the expenses of the Joint Education Board are to be met.* The Joint Education Board will probably be directed or empowered to issue a precept on each constituent council for what is calculated to be their proportion of the expenses of the Joint Board.

The power to borrow money or to raise a rate is restricted generally to *the councils which are elected by the people.*

Section 100 of this Act gives the Minister power to make grants to L.E.A.s and others, in aid of their educational work, from moneys provided by Parliament, as a practical application of the partnership between the local authority and the central authority.

In accordance with regulations which the Minister may make :—

Subsection 1 (*a*) authorises payments to Local Education Authorities (except for medical work) ;

1 (*b*) authorises payments to persons other than Local Education Authorities ;

1 (*c*) authorises payments for the assistance of pupils whether of compulsory school age or over compulsory school age. (This last would include the granting of State scholarships.)

The question of the relationship between national and local expenditure is not a simple one to deal with. Expenditure connected with the nation as a whole, e.g., Army, Navy and Air Force, or of the High Court of Justice, essentially must be a charge on the national exchequer. Other services such as education may be described as semi-national. Education is for the benefit of the State ultimately, but is administered locally.

One difficulty occurs in apportioning the cost between the national exchequer and the local authority what portion of the cost should be provided from the public purse, and what portion of the cost should be provided locally ? There is also another difficulty, that of distributing grants paid from the national funds, *equitably*, among the various Local Education Authorities. Two things make it difficult to provide equal opportunities for all, in that some areas have *a low rateable value*, and also may have a *high child population*, as compared with other areas commonly called richer areas.

During the second reading of the Bill a Member of the House drew attention to the following present variations in the Education Rate under different authorities : Surrey, 1s. 7½d. ; Isle of Wight, 1s. 7½d. ; Middlesex, 1s. 11d. ; Sussex, East, 1s. 9½d. ; Carmarthen, 7s. 5d. ; Glamorgan, 6s. ; Durham, 5s. 6½d. ; Pembrokeshire, 5s. 8½d., and Monmouthshire, 5s. 7d. The same speaker also gave the produce of a penny rate per child in average attendance in each of these county areas : Surrey, a 1d. rate produces 118d. per child in average attendance ; Isle of Wight, 80d. ; Middlesex, 104d. ; Sussex, East, 94d. ; Carmarthen, 42d. ; Glamorgan, 27d. ; Durham, 24d. ; Pembrokeshire, 24d., and Monmouthshire, 24d.

A Royal Commission on Local Taxation was appointed in 1897 and reported in 1901. Ten years later, in 1911, the Chancellor of the Exchequer (Mr. Lloyd George) appointed a Departmental Committee to examine the changes which had taken place in the relations between Imperial and Local taxation since 1901, to examine the proposals made by the Royal Commission in 1901, and to make recommendations to the Government.

This committee (known as the Kempe Committee) recommended that a grant for education should be made by the exchequer, of the amount of the difference between what they called a *standard cost* and a *standard rate*, plus a proportion of excess expenditure above the standard cost. They recommended that the standard cost should be fixed at 60s. per child, and the standard rate at 7d., and the proportion of excess expenditure to be contributed by the exchequer at two-fifths [60s. per head was considered to be the minimum cost for which the service could be provided under the most satisfactory conditions, *at that time*, and 7d. was the average rate at that time.] The grant could, however, be expressed by taking three-fifths of the expenditure at 60s. per head, plus two-fifths of the remaining expenditure, less a sevenpenny rate (36s. being three-fifths of 60s.). The following example shows how the grant would be calculated in practice on that basis :—

Assuming the average attendance to be 10,000 children ;	
The total expenditure to be	£40,000
And 1d. rate to produce	£ 1,500
On this assumption the grant in this case would be as follows :—	
36s. × 10,000	£18,000
Two-fifths of £40,000	£16,000
Total	£34,000
Less a 7d. rate (£1,500 × 7)	£10,500
Exchequer grant ...	£23,500

The first Great War interfered with any full consideration of the Report of the Kempe Committee for some time. In 1917, Mr. Fisher introduced a supplementary grant to enable extra payments to be made to teachers. Further changes were made in the grant system, the formula finally adopted was "36s. per unit of average attendance, plus three-fifths of the cost of salaries of teachers, plus one-half the net expenditure on special services, plus one-fifth of the remaining net expenditure, less a 7d. rate." No L.E.A. was to receive *less than 50 per cent* of their net expenditure, with a maximum limit of *about* two-thirds. Grants for higher education purposes were paid as separate grants for details of secondary education, evening classes, etc., with a deficiency grant to make that total up to 50 per cent.

This minimum grant of 50 per cent was statutorily fixed by the *Education Act, 1918*, but the prescriptive right to a minimum grant *for elementary education* was statutorily removed by Section 12 of the *Economy (Miscellaneous Provisions) Act, 1926*. In practice it was found that this benefited the wealthier areas more than the others, because where a 7d. rate produced a high total value, and this larger amount was deducted from the grant calculated according to the formula, this necessitated a proportionately *higher deficiency grant* to bring the minimum grant up to 50 per cent.

The numerous separate higher education grants later were consolidated

into a uniform grant of 50 per cent of expenditure thereon (instead of having to calculate over 40 separate grants) and then adding a deficiency grant to their total.

The pre-war system of making grants from the exchequer was as follows :

A grant of 50 per cent for higher education expenditure, together with, for elementary education expenditure, 36s. per child in average attendance ; 60 per cent of teachers' salaries ; 50 per cent of expenditure on certain special services (medical inspection, etc.) ; and 20 per cent of the remaining expenditure (office costs, maintenance charges, loan charges, etc.), less the product of a local rate of 7d. in the £.

The new proposals of the 1944 Act (as outlined in the Financial Memorandum issued with the Bill) *will* to some extent *perpetuate existing inequalities* between areas. Those who received the lower percentages of grant will continue to receive lower percentages, while those who received higher percentages will continue to do so. This may be due to the difficulty of combining the three factors—expenditure, need and ability—into a satisfactory formula for calculation of the grant, owing to the wide variation of circumstances in different areas.

Since the new L.E.A.s will be charged with *all* educational functions, the distinction between grants for what were called elementary education and secondary education will disappear, and one combined grant will be made to assist the L.E.A.s to provide for the three progressive stages of education.

The grants for elementary and higher education which were paid to each authority for 1938-39 (the last complete year before the second Great War) will be added together, and the result expressed as *a percentage of the total recognisable expenditure* of the 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 will give the combined standard percentages of expenditure on which the revised system will be based. (See, however, Section 110 and the Seventh Schedule for adjustments.)

In the first year, 1945-46, each of the combined standard percentages will be increased by two, and there will be further successive increases of one until an increase of five is reached in the fourth year, 1948-49.

In 1938-39 the board's grant for the country as a whole represented 49·36 per cent of the net recognisable expenditure of L.E.A.s. The aggregate grants after the increases described above will rise in the first year to 51·36 per cent and by the fourth year to 54·36 per cent of the expenditure.

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 new services included in the reforms.*

The grant will be a *percentage, based on conditions and grants in 1938-39.* The following example may make this point clearer :—

For one county borough the following will apply :—

	£	s.	d.
Net expenditure was in 1938-39 :			
Elementary education	169,121	16	2
Higher education	59,337	8	5
Total expenditure ...	228,459	4	7

	£	s.	d.
Board of Education grants in 1938-39:			
Elementary education	51,545	0	0
Higher education	28,725	11	0
Total grants	£80,270	11	0

This combined percentage for 1938-39 was about 35·1 per cent (of £228,459).

The grant for 1945-46 will be 37·1 per cent. The grant for 1946-47 will be 38·1 per cent.

And so on, until in 1948-49, the grant will be 40·1 per cent.

In another county borough the following figures apply :—

1938-39—	£
Total expenditure for elementary *and* higher education	106,256
Total grant ,, ,, ,,	42,578

The total grant for 1938-39 was about 40 per cent. of £106,256.

From this, the grant for the following years will be as follows :—

1945-46 : 42 per cent. 1946-47 : 43 per cent.

And so on until in

1948-49 the grant will be 45 per cent.

After this date it is presumed that further arrangements as to grants will be made.

In areas where the total expenditure for the standard year included the costs of supplying school meals and milk, this amount *may* be deducted from the total before calculating the percentage of grant to be paid.

In addition to the above percentages, based on 1938-39 grants, during the earlier years of the operation of this Education Act, some L.E.A.s may receive :—

(*a*) Grants from the Minister of Education towards the cost of providing milk, meals and other refreshments (Section 49 of this Act).

(*b*) Grants from the Ministry of Labour towards administrative expenses :—

(i) Where a scheme for giving assistance to young persons with respect to choice of suitable employment is operated by the L.E.A. (Sect. 81 of the *Unemployment Insurance Act, 1935*).

(ii) a grant towards expenses in connection with the administration of benefit to insured young persons ;

(iii) a grant towards the cost of providing courses of instruction for unemployed young persons (Section 76 of *Unemployment Insurance Act, 1935*) ;

(iv) a grant towards providing meals, or milk and biscuits to unemployed insured young persons in attendance at approved courses. (Section 1 of *Unemployment Insurance Act, 1938.*)

Some of the above grants from the Ministry of Labour may be discontinued when Section 44 of the *Education Act, 1944,* comes into operation.

(*c*) In addition, extra grants may be made to some needy areas. The financial memorandum which accompanied the Education *Bill* stated :—

"The exact basis of distribution of these additional 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."

(*d*) "Special" extra grants to the L.E.A.s in Wales and Monmouthshire, in accordance with Section 101 following.

Product of a 1d. Rate. *Mr. W. Joseph Stewart* asked, on 24th September, 1943, the amounts from the proceeds of a 1d. rate levied for elementary education purposes in each of the administrative counties of England and Wales for 1942?

Mr. Butler: The following table gives the estimated product of a 1d. rate for the financial year 1942-43 for each administrative county in England and Wales. Figures giving the actual product are not yet available.

Local Education Authority	£ Estimated product of a 1d. rate	Local Education Authority	£ Estimated product of a 1d. rate
ENGLAND		Oxfordshire	2,645
Bedfordshire	2,353	Rutland	435
Berkshire	5,231	Shropshire	3,871
Buckinghamshire ...	8,889	Somersetshire	8,888
Cambridgeshire ...	1,052	Staffordshire	8,607
Isle of Ely	1,198	Suffolk, East	2,794
Cheshire	16,366	,, West	1,419
Cornwall	5,184	Surrey	41,692
Isles of Scilly ...	22	Sussex, East	6,606
Cumberland	2,793	,, West	7,050
Derbyshire	10,056	Warwickshire	7,498
Devonshire	10,128	Westmorland	1,189
Dorsetshire	3,546	Wiltshire	5,010
Durham	10,750	Worcestershire ...	5,721
Essex	21,223	Yorks—East Riding ...	2,796
Gloucestershire ...	5,975	,, North Riding	5,752
Hampshire—S'h'pton	12,260	,, West Riding ...	21,292
,, Isle of Wight	1,973	London	233,350
Herefordshire	1,492	WALES	
Hertfordshire	17,110	Anglesey	679
Huntingdonshire ...	1,004	Breconshire	1,107
Kent	19,581	Cardiganshire	683
Lancashire	23,375	Carmarthenshire ...	1,233
Leicestershire	5,225	Caernarvonshire ...	2,476
Lincs.—Parts of Holland	892	Denbighshire	2,582
,, ,, ,, Kesteven	2,090	Flintshire	2,875
,, ,, ,, Lindsey	4,950	Glamorganshire ...	5,923
Middlesex	33,476	Merionethshire ...	731
Norfolk	4,409	Monmouthshire ...	3,516
Northamptonshire ...	3,941	Montgomeryshire ...	674
Soke of Peterborough	138	Pembrokeshire ...	852
Northumberland ...	8,816	Radnorshire	812
Nottinghamshire ...	8,094		

The above list gives *some* indication of what may be called "the poorest authorities."

(2) The Minister of Health shall by regulations make provision for

the payment by him to local educational 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.

The *Ministry of Health Act, 1919* (Section 3) transferred to the Minister [of Health] " all the powers and duties of the Board of Education with respect to the medical inspection and treatment of children and young persons as given under paragraph (*b*) of subsection (1) of Section 13 of the *Education (Administrative Provisions) Act, 1907* (as amended and extended by the *Education Act, 1918*) :—

Provided that for the purpose of facilitating the effective exercise and performance of these powers and duties, the Minister [of Health] may make arrangements with the Board of Education respecting the submission and approval of schemes of local education authorities, and the payment of grants to local education authorities, so far as such schemes and payments relate to or are in respect of medical inspection and treatment; *and the powers and duties of the Minister (of Health) may under any such arrangements be exercised and performed by the Minister (of Education) on his behalf and with his authority under such conditions as he may think fit.*

In view of the above, a partial liaison was established, through the fact that Sir George Newman became the Chief Medical Officer for both the Board of Education and the Ministry of Health.

It has been pointed out that certain anomalies exist in connection with present arrangements, e.g., the supervision of institutions for orthopaedic cases is dealt with by the Ministry of Education; while for persons below and over school age (*who may be treated in the same institution* as those of compulsory school age) this devolves upon the Ministry of Health.

This section forecasts grants in connection with medical inspection and treatment being made by the Minister of Health (and not merely by the Minister of Education acting for him) *at some time in the future.* But if a transition period occurs before this prospective change materialises, and the Minister of Education continues to act for the Minister of Health. the second paragraph of this clause will cover it.

Newsholme's *Ministry of Health*, p. 104, states :—

> If this work should be taken over by the Minister of Health, " no action should be taken which will decrease the active interest of the local Education Committee, and still more of the school teacher in the detailed work of medical inspection and treatment of school children.
>
> " Combined meetings of the Education and Public Health Committees, conferences of teachers, inquiry officers and the medical officer will help to preserve this interest, while as medical inspection becomes more preventive and less palliative and curative, the necessity for such mutual meetings and

conferences between hygienic and scholastic workers will be still more necessary."

(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 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.

This subsection gives the Minister a great power of insisting on the work of the L.E.A. being carried out.

The regulations regarding payments for medical inspection and treatment may prescribe the conditions which must be complied with, for grants; and also make it compulsory for L.E.A.s and other persons to comply therewith. This *may* include operational treatment for children and young persons at voluntary hospitals or otherwise. All depends on the compulsory regulations.

The Minister of Education may by the grant regulations exercise financial pressure on L.E.A.s who do not carry out his directions, including the reports, returns and information included in Section 92 above.

(4) Where the Minister is satisfied that the persons responsible for the management of any school or other educational institution are, by reason of the provisions of any trust deed 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 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.

The general conditions where this subsection would be applied are that the Minister will have laid down conditions under which grant would be receivable (Subsection (3) above). Those conditions will have been approved by Parliament. When applying for a grant the managers or governors of the particular school may find that their trust deed prevents them from fulfilling those conditions that Parliament has approved. By this subsection the Minister has power to alter the *trust deed.* He is hereby empowered to make such modifications as may be necessary, in any trust deed or instruments relating to the management of any school or other educational institution, to enable the persons responsible for the management to comply with any requirements proposed by the regulations of the Minister of Education or regulations of the Minister of Health (whether these latter are made by the Minister of Health or by the Minister of Education acting for him).

(5) Nothing in this section shall affect any grants in aid of university education payable out of moneys provided by Parliament otherwise than in accordance with the provisions of this Act.

No grants made under Section 100 of this Act for aid in research or other purpose shall affect any grants made to a university from the University Grants Committee. This will obviate any grants to a university by the University Grants Committee being reduced because grants in aid of university education may be made by the Ministry of Education.

101. Special financial provisions relating to Wales and Monmouthshire.—(1) Subject to the provisions of this section, the Minister shall pay to the local education authority for every area in Wales and Monmouthshire a special annual grant in respect of any school which is maintained or assisted 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 under section nine of the Welsh Intermediate Education Act, 1889.

(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, so, however, that the total sum payable for any financial year under the provisions of this section in respect of the schools situated within the area of any county 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.

The *Welsh Intermediate Education Act, 1889*, was passed to make provision for the intermediate and technical education *of the inhabitants* of Wales and Monmouthshire. The opening section of the Act stated that "as far as is consistent with the tenour thereof, this Act shall be construed as *one with the Endowed School Acts*, and may be cited together with those Acts as the Endowed Schools Acts, 1869 to 1889." The Act was renewed each year with the Endowed Schools Act, 1869, until the *Expiring Laws Continuing Act, 1922*, made both permanent. (See Appendix A.)

The *Local Government Act, 1888*, had created county councils with extensive powers and duties connected with the local government of their area, and in 1889 an extension of the principles of the *Endowed Schools Act, 1869*, was made to meet the special needs of Wales. By the *Welsh Intermediate Education Act, 1889*, the newly created county councils were entrusted to deal, to some extent, with matters of education, although there was little real control vested in the council themselves at that time.

The initiative in framing schemes was transferred to a "Joint Education Committee," acting for each county and county borough.

Section 16 of the Act stated :—

> In this Act the expression "county" means an administrative county as defined in the *Local Government Act 1888*, and includes a county borough within the meaning of that Act and the expression "county council" includes the council of a county borough.

Each committee consisted of three members nominated by the county council, *joined with* two members nominated by the Lord President.

The joint committees were to prepare a scheme for the *intermediate* or technical education of the *inhabitants* of their respective counties (not merely of boys and girls), specifying in each case the educational endowments which in their opinion ought to be used for the purposes of such schemes. The term "intermediate" was used to refer to education "intermediate" between elementary education and university education. These joint committees were entrusted with *scheme-making powers only*. The funds and schools were to be managed by governing bodies constituted by the several schemes.

Recognising the comparative poverty of much of Wales in educational endowments, a statutory departure in endowment law was made, in that funds might be provided (on the recommendation of the county or county borough council) out of the county rate (not exceeding a ½d. rate) and the Treasury were to pay, out of moneys provided by Parliament, in respect of schools in each county, sums of money which in the aggregate were not to exceed the amount payable in that year out of the county rate, *which county rate and Treasury grants were to be treated as endowments in the schemes.*

The amount to be paid by the Treasury was fixed later by the *Education Act, 1918* (Section 42) as an annual sum not exceeding 22½ per cent of the sum produced by a rate of ½d. in the £ for the area to which the scheme relates, *together with* a sum equal to 5 per cent of the net income of the preceding year of any endowment comprised in the intermediate or technical education fund or, instead of this, such sum as the Central Welsh Board may agree to accept.

The *Local Government Act, 1929* (Section 82 (1)) abolished this arrangement and substituted for it a fixed sum equal to the aggregate amount payable for the year ending 31st March, 1929.

Sections 101 (1) and (2) of this 1944 Act enables the Minister to continue to pay to the Welsh local education authorities the special grants referred to above which were payable under Section 9 of the *Welsh Intermediate Education Act, 1889*, immediately before the coming into operation of this part of this Act, but the total sum payable in any year shall not be greater than the maximum amount payable for the year 1928-29.

(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, that the school complies with such standards of efficiency as may be specified in the regulations.

The regulations made for the payment of the above-mentioned grants will enable the Minister to secure that each school to which the grant relates must comply with definite standards of efficiency.

(4) As from such date as the Minister may by order 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 of sums calculated by reference to the product of a rate, and section forty-two of the Education Act, 1918, shall cease to have effect ; and

These clauses (Section 101 (4) (*a*) and (*b*)) amend schemes made under the Welsh Act, so as to discontinue the payment of rate monies into the funds set up under these schemes. As the *cost of maintaining* both county and voluntary *schools will be met under the general provisions of this Act by the L.E.A.s*, the special rate contribution in aid of the endowments referred to will no longer be required.

(*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 halfpenny 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.

Consequent on the changes above mentioned, this Subsection 4 (*c*) is included to preserve the financial position of the Central Welsh Board.

Although rate payments under the scheme *are discontinued for the individual schools*, the council of every county and county borough in Wales must make an annual payment to the Central Welsh Board to finance the Board's expenditure calculated as herein stated.

(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.

As the grants payable by the Minister under Section 101 are *special* grants, or grants for a special purpose, they do not prevent the general system of grants under this Act being payable, including reconstruction of voluntary schools, and subsequent repair charges therefor.

The Welsh Church Act, 1914, disestablished the Church of England in Wales. *Disestablishment is the annulling of establishment*, but since an established Church usually has property, disestablishment generally includes disendowment, even when there is no State endowment of religion. (Owing to the intervention of the Great War, this Act was not brought into operation until 1920.) Arrangements were made by the Act for the vesting of Welsh Ecclesiastical property in a body of Commissioners who should transfer certain specified portions for Church purposes. Out of the residue certain properties appropriated to parochial benefices were to be transferred for charitable or eleemosynary purposes, *including the aiding of poor scholars.* The final residue after making specific provision for various purposes was to be *transferred to the University of Wales.*

N.B.—Now that the L.E.A.s of Wales and Monmouthshire have the duty to maintain sufficient primary and secondary schools, with the aid of *the percentage grant*, under Section 100, *the special grant* under Section 101, together with, in some cases, a *Necessitous Area grant*, it might be extremely useful if the Central Advisory Council for Wales and Monmouthshire were to consider the best uses to which educational endowments in the Principality and Monmouthshire may be applied, in order to carry out the purpose of the founders, that *the recipients should have some educational benefit which they would not otherwise have obtained.* (See the Reports of the Commissioners appointed under the *Educational Endowments* (*Scotland*) *Acts*, 1928 to 1935, for similar inquiries into the educational endowments in Scotland). This would be an additional inquiry to that suggested in the Note on Sub-section (4) above.

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 of every aided school and of every special agreement school maintenance contributions 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 in respect of alterations to the school buildings and repairs to the school premises:

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.

In Section 102 we have a new departure in educational procedure in the payment of 50 per cent of the cost of bringing voluntary school buildings up to the standard prescribed by the Minister under Section 10 of this Act.

A Treasury minute dated 29th August, 1833, included the following conditions in connection with the distribution of a grant by Parliament of a sum of £20,000 in aid of private subscriptions toward the cost of providing schools for *the children of the poorer classes* in Great Britain:—

(1) That no portion of this sum be applied to any purpose whatever except the *erection of a school-house* (i.e., excluding residences for teachers);

(2) that no application be entertained unless a sum be raised by private contribution equal at *least to one-half of the total estimated expenditure*;

(3) That the amount of private subscription be received, expended, and accounted for before any issue of public money for such school be directed.

Later grants in aid of building colleges for training teachers were made.

By 1852 nearly 3,800 schools had been built with Parliamentary aid. When the *Education Act, 1870*, was passed School Boards were given a power, and a duty, to provide schools where there was a deficiency of school accommodation, this was instead of the Government making grants, and Section 96 of that Act stated "*No parliamentary grant shall be made in aid of building, enlarging, improving or fitting up any elementary school.*

Although building grants were expressly forbidden to both board schools and voluntary schools by that Act, and the 1902 Act did not repeal the Section 96 mentioned, yet so far as provided schools were concerned, building grants were revived by the over-riding authority of the *Appropriation Act in 1907.*

Building grants for training colleges which had been discontinued in 1860 were revived in 1905. (Sir William Anson, then Parliamentary Secretary to the Board of Education, officially opened the Hereford training college, which was one of the first to be provided by a county authority (as distinct from a county borough) under the renewed concession.) The Board of Education paid to the L.E.A. for Hereford county, a lump sum grant equal to 75 per cent of the cost of this college, instead of merely paying 75 per cent of annual loan charges.

When regulations for grants were made under Section 44 of the *Education Act, 1918*, these authorised payments for 20 per cent of the cost of schools provided by a L.E.A., but the prohibition of grants in aid of building schools made in the 1870 Act still held good so far as voluntary schools were concerned.

The *Education Act, 1902*, compelled the maintenance of voluntary schools (including the teaching of denominational religion therein) to be undertaken by the L.E.A. on condition that the managers "*provided the school-house free of any charge* to the L.E.A., and as mentioned, Section 96 of the 1870 Act was not repealed. This prohibition was continued in the Sixth Schedule of the 1921 Act.

Under this (1944) Act that prohibition is repealed, and the Minister under Section 102 may pay 50 per cent of the cost of bringing certain voluntary school *buildings* up to the requisite standards, and also 50 per cent of the cost of future *external* repairs to the school *premises*, the cost of all internal repairs being provided by the L.E.A.

The procedure and conditions of a hundred years ago may be gathered from the following :—

The Committee of Council on Education in September, 1839, issued a "Form of Certificate" which the majority of the school committees or trustees representing the promoters of a school-house who had applied for a grant, had to sign for the information of the "Right Honourable the Lords of the Committee of Council on Education." This form included :—

(1) That the new School-house, in aid of which your Lordships were pleased to grant £——— is completed in a satisfactory and workmanlike manner, being built of the proper dimensions, and in all respects according to the plan and specification proposed to and approved by your Lordships.

(2) That the amount of private subscriptions specified in our memorials to your Lordships *have been received*, expended and accounted for ; and there does not remain any debt, charge or claim of any kind on account of the buildings, except what will be liquidated by your Lordships' grant, the payment of which is prayed for.

(3) That the site of the school-house has been obtained with a good legal tenure, and has been duly conveyed to trustees, so as to secure the building for *the purpose of educating the children of the poor.*

(4) That we are ready to submit to any audit of our accounts for building which your Lordships may direct, to make such periodical reports respecting the state of our school as your Lordships may call for, and to admit your Lordships' inspectors, according to the annexed regulation, Marked (A).

(5) That the deed of trust, a copy of which is lodged at the Council Office, has been duly enrolled in Chancery (or in Scotland, duly registered) according to law.

In testimony whereof we affix our signatures, and request the payment of the sum appropriated to the school at ———— aforesaid,

Signed and dated ————.

Regulation (A)

The right of inspection will be required by the Committee in all cases. Inspectors authorised by Her Majesty in Council will be appointed from time to time to visit schools to be henceforth aided by public money.

The inspectors will not interfere with the religious instruction, or discipline, or management of the school, it being their object *to collect facts and information, and to report* the result of their inspections to the Committee of Council.

See Note on Section 77 above *re* inspection, also Section 105 below *re* loans for managers, or governors, to enable them to meet *their share* of the cost of rehabilitation.

The proviso to Section 102 relates to " repairs and alterations " which are covered by an agreement which is not for a new school but for the enlargement or alteration of an *existing* school, a project to which *repairs* may be incidental.

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.—Where the Minister, by an order made under section sixteen of this Act authorises the transfer of any voluntary school 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 as an aided school or a special agreement school, the Minister may pay to the managers or governors of the school in respect of any sums expended by them in the construction of the school a grant not exceeding one-half thereof:

This section refers to two types of voluntary schools :—

1. *A transferred school*, where an existing voluntary school for special reasons is transferred to a fresh site under Subsection 1 of Section 16.

A transferred school is not deemed to be a *new* school but to be the old school in a fresh place. The construction of the school is deemed to be alteration of the old school, and the site for the school must be provided by the L.E.A. as an *alteration* to the playground of the old school; but see Additional Note to Section 16 (1).

The site may be purchased by the L.E.A. and if they desire, instead of vesting the site in the managers or governors of the school they may grant the " *use* " of the site to the managers or governors for the purposes of a primary or a secondary school, as the case may be, with a proviso

that the site shall revert to the L.E.A. on the school ceasing to be used as a school. The site need not be conveyed to the managers or governors under the *School Sites Act, 1841*, for that Act only refers to the granting of a site for an *elementary* school, but the procedure may be analogous thereto.

Not being a new school, it is not necessary to give three months' public notice of the proposed transfer of the school if the Minister has sanctioned the transfer.

2. *A substituted school* is one where an application has been made for the sanction to the establishment of a school under Section 13 (2) to be maintained by the L.E.A. as a voluntary school, which school, when agreed to be maintained as a voluntary school, shall be in *substitution* for another voluntary school (or schools) which is (or are) being discontinued.

Such a substituted school will be considered to be a *new* school and the provision of a site for it will be the responsibility of the managers or governors, and this cost will be eligible for a grant in aid.

The three months' public notice of the proposals under Section 13 (3) must be given, but the two years' notice under Section 14 (1) of the managers or governors intention to discontinue the old schools for which the new one is substituted will not be necessary.

Under Section 103 the Minister may make grants in aid of

(1) The *transfer* of a voluntary school to a new site under Section 16 (1); or

(2) The *substitution* of new voluntary schools for old ones under Section 16 (2) and Section 13 (2) and (3).

The words *school or schools* proposed to be established in Section 16 empower the Minister to authorise the substitution of a school for one, or more than one, existing schools but the substituted school or schools will be for the same number of pupils as in the school or schools to be discontinued, or rather grant in aid of that number may be made. E.g., if the school or schools to be discontinued had a total of 200 pupils and the managers or governors desire a fresh school (or schools) for 300 pupils, they can only obtain a grant not exceeding half the cost of providing for 200 pupils. The whole of the cost of providing for the additional 100 must be provided by them. The sanction of the Minister under Section 16 (2) will not give the managers or governors a prescriptive right to a *larger* school than the school (or schools) for which it is substituted. (Cf. Section 104.)

As the transferred school will not be considered as a *new* school, but *the old school in a new place*, the expenses of the transfer will be treated as alterations to the existing school, consequently the responsibility for the cost of alterations to the site rests on the L.E.A. as under Section 114 (2) it does not fall on the managers or governors, but the L.E.A. will receive their percentage grant on this expenditure.

Provided that no grant shall be payable under this section to the managers 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.

This proviso is to obviate any risk of duplication of grants for the same school—a grant by the Minister and also a grant in aid by the L.E.A. under the special agreement.

Special agreements were made under the 1936 Act whereby the L.E.A. made a grant of from 50 to 75 per cent of the cost of establishing schools for senior scholars, and the Third Schedule to this Act authorises a resuscitation of the power to make such agreements under the conditions therein given either to renew the old agreement, or to make a revised agreement. (See paragraph II of the Third Schedule).

If the managers or governors have received a grant from the L.E.A. under such an agreement in connection with the discontinued schools, the Minister will not make any grant in aid of the 25 to 50 per cent of the expenditure they themselves have agreed to make (although Section 105 later *may* authorise a loan therefor).

(2) For the purposes of this section, any sum expended for the purpose of providing a site for a school shall be deemed to be expended in the construction of the school.

(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 from which the school is to be transferred, or of the sites of the discontinued schools as the case may be.

The cost of the purchase of a site for a school will be considered as part of the cost of the construction of the school.

The managers or governors or trustees of the schools to be closed must take into account any sums which they may receive from the sale of the site from which the school is to be transferred. If the site should be ecclesiastical property and is required for the purposes of the church to which it was attached (e.g., for a parish hall or institute), there might be nothing to bring into account unless it were valued. Similarly, if under the *School Sites Act, 1841*, the site reverts to the representative of the original donor of the site there would be nothing to bring into account.

But if a site in a housing estate should be purchased for, say, £1,000, and the old site in an urban area being more valuable sold for, say £4,000, the managers or governors may not retain this difference between the site values for their own purposes (e.g., their own share of the cost) but must bring it into account. If the sum received for the old site be less than the cost of the new site this would on being brought into account reduce the net cost of establishing the school. *The Minister will only pay grant on the net cost.*

104. Power of the Minister to make grants in respect of aided schools and special agreement schools established partly 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 that any school proposed to be established should be maintained by a local education authority as a voluntary school and has directed that the proposed school shall be an aided school or a special agreement school, then, if the Minister is satisfied that although the proposed school will

not be in substitution for one or more discontinued schools, yet the establishment thereof is wholly or partially due to the need of providing education for a substantial number of displaced pupils, he may by order certify as expenses attributable to the provision of education for displaced pupils so much of the amount expended in the construction of the school as is in his opinion so attributable, and may pay to the managers or governors 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.

(2) For the purposes of this section—

(*a*) the expression "displaced pupils" means, in relation to any such proposed school as aforesaid, pupils 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; 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 shall be deemed to be expended in the construction of the school.

Section 103 deals with the transfer of a school to another site, or the substitution of another school for one or more voluntary schools, where this course is necessary.

This Section 104 deals with the comparatively difficult problem of enabling voluntary schools to have assistance when they are dealing with children who have moved from one part of the country to another, and wish to provide for the education of the children (who may have been moved from a blitzed or congested area where a school had been situated) in the place to which they have gone. This section enables "substantial numbers" of children to be recognised for help in the building of the school in which they will in the future be educated, grants being payable for providing accommodation for children who before being moved were taught in denominational schools. A school may have been damaged by enemy action or destroyed with the homes of the parents. These parents may have homes on a new housing site and not in the area where they were situated before the damage, and their children require education in the new district.

In such a case public notice must be given of the intention to provide a new school, and the notices will state the number of children in respect of whom the school is required. It will be open for the L.E.A. or *any ten local government electors* to object to the school on the grounds that a *denominational* school is not required in the place stated in the notice, or is not required for so large a number.

If at the inquiry it is established that this school is required for a number of pupils larger than the number of substituted or displaced pupils, the denomination will *not have a prescriptive right to a grant* equal to 50 per cent. of the cost of providing *the whole of* this larger school, but will get a grant in respect of that proportion of the cost which is due to the displaced pupils.

If, for example, a school for 300 pupils is to be established of whom, say 150 are displaced pupils, the Minister can make a grant up to half the cost of the provision for that 150. The Minister can under another provision of the Act grant a loan for the remaining half of the cost for the displaced pupils, but the cost of the second 150, over and above the number of pupils recognised as "displaced," has to be defrayed entirely by the denomination. Both a school *substituted* for other schools and a school for *displaced pupils* will be a *new* school and the cost of the site must be borne by the managers or governors, and does not fall on the L.E.A. as in the case of a *transferred school.*

In calculating the cost of the construction of a school the cost of providing a site for the school will be considered as part of the cost of the construction.

The section does not specify any particular number of pupils to be provided for, but refers to a school being required for a "*substantial number*" of such pupils for whom education would have been provided in an aided or special agreement school if that school had not ceased to be available.

The word "substantial" has a relative meaning here, depending on the numbers in each case with which comparison is made. Twenty to 25 could be considered as a substantial number in connection with a small school of 40 to 50, but could scarcely be considered as a substantial number in connection with a large school for 300 or 400 pupils.

This section may be of service in enabling the managers or governors of a voluntary school (which has up to the present provided for pupils from 5 to 14) to establish a new secondary school for the over-11, *when the older school can no longer be available for senior pupils* on reorganisation.

If a group of schools previously recognised as providing for pupils from 5 to 14 cease to be recognised for senior pupils, these senior pupils would be "displaced pupils" and a proposal may be put to the Minister under Section 13 (2) for the establishment of a school for these displaced pupils to be maintained by the L.E.A.

The provision of such a school might be proposed by representatives from the various schools concerned and the managers of these schools might find the funds necessary, each in proportion to the number of displaced pupils from their respective schools.

If there should be an endowment specifically for the benefit of pupils from some particular parish, the Minister may under Section 86 (1) by order direct that such endowment may be used in aid of the provision of a school for displaced pupils in the same or in another parish.

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 of any aided school or special agreement school the Minister is satisfied after consultation with persons representing them that their share of any initial expenses required in connection with the school premises 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 as may be specified in an agreement made between him and them with the consent of the Treasury.

This Section was added to the Bill during the Committee stage of the House of Commons to ease the financial pressure on the managers or governors of voluntary schools caused by the early necessity of providing 50 per cent of the cost of bringing their existing schools up to the standards prescribed by the regulations under Section 10 of this Act.

The words " after consultation with persons representing them " would allow consultation in the case of diocesan authorities with, say, a diocesan finance committee or a diocesan education committee, *but the loan is made to the managers or governors.*

The Public Works Loans Commissioners form a statutory body which has been empowered by various Acts to issue loans for public works. Section 2 of the *Public Works Loans Act, 1938*, authorised an issue of loans not exceeding £25,000,000 in the whole for construction of public works.

The loans may be repaid by equal annual instalments of principal, with interest on the part of the loan not repaid, or of instalments including principal and interest so that the whole of the money will be repaid by the end of the period sanctioned. The Commissioners as a rule require, in the absence of special circumstances, moneys advanced by them should be repaid by equal annual instalments of principal with interest on the balance where the period of repayment exceeds 30 years, but allows repayment to be made by equal annual instalments of principal and interest combined where the borrower consents to repay the loan in 30 years.

Section 105 of this (1944) Act here states that the Minister may make a loan of *such amount as may be agreed upon at such rates of interest* and otherwise *on such terms* and conditions as are specified in the agreement. The details of this agreement will be subject to the consent of the Treasury. This will put the managers or governors of voluntary schools on a similar footing to local education authorities for obtaining loans.

The maximum period for a loan has been fixed at 60 years, but as the period for which a loan is granted should not exceed the period during which the public works will endure and be of use for their initial purpose, this maximum period of 60 years is generally granted only in respect of the most durable item, the purchase of land ; although loans for land for allotments or small holdings, or land for houses for rural workers have been granted for 80 years. (Eighth Schedule of *Local Government Act, 1933.*) (A L.E.A. can, as a rule, only obtain a loan for school furniture for ten years.) Further, the period of a loan should not be too long, as the future managers or governors should not be unduly burdened with old debt to such an extent as to prevent them carrying out their ordinary duties efficiently.

It may be that a loan will be granted for no longer period than 30 years for *alterations* to a school, even if granted for so long as that, when the buildings being rehabilitated are old.

The rate of interest charged by a bank for a loan generally varies according to the economic and financial conditions prevailing at the time the

loan is raised. In prosperous national times there may be a greater demand for capital for extension of business or for investment, etc., and rates of interest may be higher than when industrial conditions are less prosperous and there is less demand for capital.

The public works loans are generally made to local authorities who are thereby enabled to get better terms than they might be able to get if they were forced into the open market where competition may be greater during prosperous business periods.

The *minimum* rate of interest was formerly fixed at 2½ per cent per annum, but Section 5 of the *Public Works Loans Act, 1935*, repealed the words dealing with this minimum rate of interest.

At the present time the rate of interest for local government loans is *somewhere about* 3½ per cent per annum. If a loan were obtained at this rate of interest for 30 years an annuity of £5 8s. 9d. per cent would be required to be paid for 30 years to repay the loan and interest by the end of that period. If, therefore, a loan of £600 were obtained for 30 years at 3½ per cent per annum the managers or governors must be prepared to make 30 annual payments of (£5 8s. 9d. × 6) or £32 12s. 6d. per annum from the time when repayment commences, exclusive of the costs of raising the loan.

Managers or governors will be able to get some preliminary idea of the amount of loan they will require from the estimates prepared for the " development plan " of the L.E.A. Mr. Butler stated in the House that it was not proposed to issue loans for less than £500.

Knowing that the managers or governors of a school would have various legal and other expenses in connection with a loan, over and above the actual costs of construction, I formerly advised voluntary school managers who consulted me, *to allow* for an annual payment at the rate of about 6 per cent of the cost of erection of a new school to be paid for 30 years to repay the capital cost with interest.

E.g. If a new school for 200 pupils were required, this might have cost then £35 per head for purchase of a site and erection of the buildings. This would mean £7,000 as the initial cost. Allowing for an annual payment at the rate suggested of 6 per cent of £7,000 would mean that £420 per annum should be paid for 30 years for the loan of £7,000 to be repaid with interest at the end of that period. This would allow roughly for the managers' payment of the *whole* cost of the new school proposed. (This rough estimate I gave of 6 per cent is comparable with the £5 8s. 9d. per cent quoted above.) If a loan is supplied at a less rate of interest than mentioned above the annual payments would be less.

N.B.—In moving the Second Reading of the *Agriculture (Miscellaneous Provisions) Bill, 1944*, the Minister of Agriculture, referring to loans to enable farmers to purchase their farms at reasonable rates of interest said, " It is considered that the rate of interest should be 3½ per cent."

The extra expenses in connection with a loan through the public works loans commissioners, include the Commissioners' fees of £1 per cent for the first £1,000, and a little less fee for each successive £1,000; also there are counsel's fees and other disbursements, to provide for.

It is not clear from this section what security the Minister would require from a body of managers or governors for a loan. In the case of a local education authority the council are able to borrow money *on the security of the general rates of the council*, but managers or governors of a voluntary school have no rates to offer as security.

Section 197 of the *Local Government Act, 1933*, states: All moneys

borrowed by a local authority shall be charged indifferently on all the revenues of the authority.

Section 105 above refers to consultation with *persons representing the managers or governors*. Will these persons be able to act as *guarantors* for a loan ?

In the case of the special grant of 5s. per child under the *Voluntary Schools Act, 1897*, Diocesan Associations were formed who made a survey of the needs of the individual schools in the Diocese and who distributed the grants paid to them for the whole of their schools as they thought expedient, i.e., the grants received were pooled and distributed as the Association thought necessary.

Probably a Diocesan Board of Finance may deal with loan questions for C. of E. schools in the diocese and be able to give such security as the Minister may require.

The first instalment for the repayment of every loan as a rule should be made payable within a period not exceeding five years from the date of the advance of the loan.

(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 required by the development plan approved by the Minister for the area ;

(*b*) expenses to be incurred in pursuance of any special agreement ;

(*c*) expenses to be incurred in the construction of any school which, by virtue of an order made under section sixteen of this Act, 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 as being attributable to the provision of education for displaced pupils ;

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, grant under a special agreement, or grant under either of the last two foregoing section as may be paid or payable in respect of those expenses.

This subsection endeavours to define more clearly what the initial expenses are for which a loan may be obtained.

(*a*) If the development plan of the L.E.A. under Section 11 of this Act, provided that certain alterations to the buildings of a voluntary primary school or a voluntary secondary school were necessary to satisfy the regulations made under Section 10(1), expenses incurred in defraying the cost of such alterations would be eligible for a loan to pay the managers' or governors' share of the expenses so incurred.

(*b*) If a *special agreement* had been made whereby, in accordance with the 1936 Act, the L.E.A. made a grant of 50 to 75 per cent of the cost of erecting a new senior school, the managers' or governors' expenditure of 25 to 50 per cent of the cost, as the case may be, would be eligible for a loan.

(*c*) Similarly, the managers' or governors' share of expenditure in connection with a transferred or substituted school would be eligible for a loan (so far as the cost for the numbers in the old school is concerned).

(*d*) The managers' or governors' share of the cost of providing for "displaced pupils" in a new school would be eligible (so far as the cost of providing for the number of displaced pupils is concerned).

In deciding how much of such expenditure should be considered as the share of the managers or governors regard must be paid to :—

(1) any maintenance contributions paid towards their liability under Section 15 (3) (*a*) ; or

(2) any grants made by the L.E.A. in connection with a special agreement school ; and

(3) any grants made under Sections 103 or 104 above.

(3) If upon an application being made to him under subsection (2) of section fifteen of this Act 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 or controlled school, 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 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 is unnecessary, shall cause such inquiry to be held before determining the application.

This subsection, for the first time in the development of the law of education, defines what has for many years been a difficult problem : what is a single school area ?

A single school area is *an area served by a voluntary school, which is not also served by a county school or a controlled school.*

Where the managers of a voluntary school in a single school area are able to meet their liabilities under the terms of Section 15 without a loan, the Minister may (if application is received within the specified six months) by order direct that the school shall be an "aided" school.

Where the managers of a voluntary school in a single-school area (as defined above) are *unable* to meet *their* liabilities without the aid of a loan, the Minister will have to consider the question whether the liabilities therefor shall be transferred to the L.E.A. and the school become a controlled school, or whether a county school should replace the former voluntary school, or whether a loan should be granted so that the school should become an aided school.

The first step to be taken by the Minister will be to *consult* the diocesan body representing the local area (whether this is a Church of England authority or a Roman Catholic authority) and also the analogous body

representing the Free Churches *in that area*, and in the light of these consultations he will examine the question as to whether a loan under the circumstances is desirable or not. If he considers that a further *inquiry* is necessary the next step for the Minister to take will be to hold a local inquiry under Section 93 of this Act, which will enable the people of the locality to express their views.

The opportunity here provided for consultation and inquiry before the Minister determines the question whether a loan shall be granted or not, to enable the school to continue as an aided school, or if it must become a controlled school, is considered to be a genuine and important concession to the Free Churches point of view.

106. Contributions between local education authorities.—(1) Where a local education authority provide in any school maintained by the authority for the primary or secondary education of any child or young person who belongs to the area of some other local education authority, then if a claim therefor is made within the prescribed period, they shall, subject as hereinafter provided, be entitled to recover 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 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 that no contribution shall be recoverable in respect thereof under this subsection.

An agreement generally has been made between the L.E.A.s of two adjoining areas for reciprocal payments for the education of what have commonly been known as "extra-district" children. This applied as a general rule to children in attendance at public elementary schools. Similarly, in an area (e.g., Lancashire) an agreement was made for payment by the county authority for children residing in a district near a county borough who might attend a secondary school provided by the authority for the county borough. *This section gives legal authority for a claim to be made.* If the authorities cannot agree as to the contributions from one to the other the amount to be paid will be fixed by the Minister, and this will be equal to the cost to the L.E.A. of providing for the education of pupils not resident in their area.

This is in accordance with the powers granted to the Minister under Section 67 above. The Minister will have to make a regulation prescribing the period within which claims can be made for contributions. At present the prescribed period is two years.

A question may arise as to which L.E.A. is responsible for the education of a child whose residence is situated *on the border line* between two adjacent areas. The first attempt at solving the difficulty may be considered from the answer to the question: To which authority are the local rates for the residence paid? That may decide the question. If it should be that the rates on the house are paid to one authority, and

the rates on the garden or appurtenances are paid to the other authority, the area liable may be deemed to be that in which *the house* is situated. In one case where a house was situated exactly on the border line, it was decided that the residence was in the area in which the main entrance of the house was situated.

The proviso deals with the case where a L.E.A., having a perfectly good education service of its own, is called upon by another L.E.A. to pay in respect of a child who has gone to a school across the border *for no good reason.*

The L.E.A. for the area in which the child's guardian resides may be of opinion that it would not be equitable for them to pay if there is *no good reason* for the child not taking advantage of the education service provided by the L.E.A. of the area where the child or his guardian is resident.

This subsection applies only to the education provided at a primary or a secondary school maintained by a L.E.A.

Claims which may be made in connection with pupils attending a technical college from another area, when there may be equivalent classes provided by the L.E.A. of the area in which the pupil resides, may be referred to the Minister under Section 67 (2) if considered it is not equitable that the L.E.A. should provide classes and in addition pay for a pupil to attend classes in another area, without good reason. Young persons attending a county college are dealt with by Subsection (5) below.

(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:

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

This Section 106 re-enacts *some* of the provisions of the *Education (Institution Children) Act, 1923,* which dealt with the cost of education of pupils sent to schools provided or maintained by L.E.A.s. This Act was passed to deal with cases where a L.E.A. might have to provide for the education of children who did not legally belong to their area, but who were resident in, or boarded out from, say, a public assistance institution (formerly styled a workhouse) or a charitable institution which happened to be situated in their area. In *Gateshead Union* v. *Durham County Council,* [1918] 1 Ch. 146, it was decided that the guardians, or the foster mother in charge of the cottage homes where children were boarded out, must be considered as " parents," who had the right to send these children to any elementary school in which there was accommodation. The children were " resident in the area " of the Durham County Council, which council must provide for their education.

Under the 1923 Act the liability of a local authority for maintenance in an institution was based upon the child's residence immediately before admission to the institution, or upon the child's Poor Law settlement. Under this section the liability will be based upon the present residence of the child's guardians or upon the place of birth of the child. This section is intended to assist in determining the incidence of educational

charges, and entails a certain amount of inquiry as to the area to which a child, resident in an institution, legally belongs.

(*b*) where immediately before the date of the commencement of Part II of this Act a former authority 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.

This subsection is of temporary value only, inserted to prevent any possibility of disagreement through too sudden changes in liability for children *at present* resident in an institution or boarded out therefrom.

In future cases the liability of a L.E.A. will be in accordance with this section generally, but no change will be made as to the present liability of a L.E.A. for children already resident.

If a former authority was liable under the 1923 Act for the education of a child the new L.E.A. which has taken over the responsibilities of the former authority will retain that liability so long as the former authority would have been liable if the 1923 Act had not been repealed.

During the House of Lords Committee Stage it was stated: "Children who are the responsibility of a local authority and who in some circumstances have to be moved to the area of another authority from the authority to whom they formerly belonged, this provides that the latter authority shall continue to bear the expense." This not only will include children in an institution but applies to some children whom local authorities board out.

(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.

If it is not possible to determine the area in which the guardian resides, nor the area in which the child was born, and the L.E.A.s cannot mutually agree as to the area, the Minister, on application being made, will decide the question of which L.E.A. shall pay the cost of the education of the child. It may be that in some cases records of births may have been destroyed by fire following an enemy air raid.

(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.

The question of the " legal right to the guardianship " of a child has been the subject of a number of Acts of Parliament. An Act in the reign of Charles II contained a provision enabling a father to appoint guardians for his children, either by deed or by will. By subsequent Acts, from time to time, the rights of a mother over her infant children have been recognised and declared.

Under the *Guardianship of Infants Act, 1925*, on the death of the father, the mother, if surviving, shall be the guardian, either alone, if no guardian has been appointed by the father, or jointly with any guardian appointed by the father.

In the case of a *Separation Order* between the father and mother, the parents may agree as to which of them shall have the custody of the children, or in a case of *divorce*, the court may grant the custody of children to one of the parents. If a child be a " *ward of court*." that child will be under the care of a guardian formally appointed by the court.

If a person who has the legal right to the custody of a child but is deprived of such custody (as in the case of a child committed under the *Children and Young Persons Act, 1933*, to the care of a " fit person "), the fit person may be deemed to be the guardian.

Under Section 5 (1) of the *Adoption of Children Act, 1926*, a person who adopts a child accepts all rights, duties, obligations and liabilities of the parent or guardian of the child.

Under the *Poor Law Acts, 1888 and 1899*, in the case of children maintained by the guardians of a Poor Law union (now the Public Assistance Committee), being orphans, or children of persons unfit to have control of them, all the rights and powers of parents might be vested in the guardians.

(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.

Under this subsection (5) an arrangement may be made between various L.E.A.s to defray the cost of educating those who are in *county* colleges, in areas other than those financially responsible for them.

Subsection (1) deals chiefly with claims for those receiving primary or secondary education. This subsection enables payments to be made *by agreement* for those being educated at other educational institutions, e.g., for pupils attending a technical college.

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.

This is a very necessary section of the Act for it ensures that expenses

incurred by the Ministers in carrying out the provisions of the Act *will be defrayed out of monies provided by Parliament,* and they will not be personally liable therefor.

The Ministers therefore submit their Estimates to Parliament at the time when funds are usually voted for various national services: This applies so far as this Act is concerned to both the Minister of Education and to the Minister of Health.

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, the Minister may exercise, and may authorise or require any local education authority, former authority, or other person or body of persons, to exercise during the period before the date on which Part II of this Act comes into operation 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.

Section 119 gives the first day of April, 1945, as the date when Part II of this Act will come into operation. This section (108) empowers the Minister to take, and to authorise the new L.E.A.s to take, such measures as he may consider necessary or expedient to facilitate the bringing into operation Part II of the Act, with the arrangements for the organisation of a statutory system of education.

The effect of this section differs from the power recently exercised in deferring the raising of the compulsory school age to 15. That was a deferring action. This gives power for accelerating action.

This section may enable action to be taken before 1st April, 1945, if such action might prevent delay when that time arrives, and will enable the Minister to authorise any L.E.A. which is possibly more advanced than some others with its plans to act in certain directions.

(2) The Minister shall, in exercise of the power conferred by the last foregoing subsection, constitute any joint education boards and 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 the said Part II.

The measures which the Minister may take under the above subsection include the constitution of joint education boards by the establishment of a " joint board " to be the L.E.A. for the areas of two or more councils, and to direct that this board shall be the L.E.A. for the areas of those councils (provided that all the councils concerned agree to the making

of the order). If the constituent authorities do not agree, the Minister may hold a local inquiry before making the order.

Similarly, powers are included for the formation of education committees, including such an education committee for a joint education board, and for the establishment of divisional executives for " county districts " as may be essential for the initial operation of Part II of the Act.

Circular 1 (15th August, 1944) of the Ministry of Education stated :—

2. Section 108 empowers the Minister to exercise certain functions, so far as he thinks it necessary or expedient, to facilitate the bringing into operation of Part II of the Act, which comes into force on 1st April, 1945. The Minister regards it as important that the new machinery of local administration for which Sect. 6 and the First Schedule provide should be set up so as to function by that date, when the new local education authorities will come into being.

3. With this object in view, the Minister is about to communicate with those authorities to whose areas he proposes to apply the provisions of Part I of the First Schedule (Joint Education Boards).

(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 that, while the order remains in force, section thirty-five of this Act shall have effect as if for references therein to fifteen there were substituted references to fourteen and section forty-three of this Act 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.

This subsection of Section 108 empowers the Minister to *delay* the raising of the termination of the compulsory school age from 14 to 15, *for a period ending not later than April 1st, 1947*, if unforeseen difficulties should prevent sufficient teachers and school accommodation being available by the 1st April, 1945.

Under Section 43 the order to establish county colleges is to be made not later than three years after the maximum limit of the compulsory school age is raised to 15.

Circular 1 (August 15th, 1944) of the Ministry of Education stated :—

9. In order that the authorities may make the necessary preparations for the raising of the school-leaving age they will require to know whether the provisions of the first paragraph of Sect. 35 are to become operative on April 1st, 1945, or whether their operation will be deferred under the provisions of Sect. 108 (3). I am to advise the authority that, in view of the impossibility of securing the necessary teachers and school accommodation by that date, the Minister proposes to make an order under that Subsection retaining the school-leaving age at 14. It is not possible at this stage 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.
See Compulsory School Age (Postponement) Order S.R. & O. 1944, No. 979.

109. Power of Minister to authorise local education authorities to provide temporary assistance for auxiliary schools.—If upon representations made to him by any local education authority 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 temporary accommodation for children who are, or whose parents desire them to be, registered pupils at any voluntary school is required until permanent accommodation can be provided for them by the managers or governors of the school in accordance with the development plan for the area, the Minister may authorise 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.

This section empowers the Minister to authorise L.E.A.s to provide *temporary* assistance for voluntary schools. It is intended to cover situations which have arisen and will arise immediately the Act comes into operation. As the various stages come into force it may be quite impossible owing to the shortage of building labour and the like for the managers or governors of a voluntary school to make immediately the alterations they would ultimately be required to make under the Act. Therefore there will be a period of hiatus and difficulty in which the expenses well might be considerable to any one school and therefore by this section that period will be treated as altogether exceptional and will enable the entire cost of providing *temporary* additional accommodation for voluntary schools to be met from public funds so long as this temporary period lasts.

The L.E.A. may, as a temporary measure, allow voluntary school managers or governors to utilise some school or parts of a school belonging to the authority as a voluntary school. (During the last Great War one L.E.A. allowed the use of part of a council school, which had a colony of about 2,000 Belgian refugees, to be used as a Roman Catholic school for the Belgian children.)

The L.E.A. here have power also to rent or lease premises for use by voluntary school managers or governors until they can provide permanent accommodation, but in all cases there should be no undue delay on the part of the managers or governors in making the necessary permanent provision.

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 of functions formerly exercisable by the council of any county district 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, 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, and, subject to the provisions of Part II of that Schedule, may make an order for the county under the powers thereby conferred.

On 1st April, 1945, the Part III education authorities will cease to exist as L.E.A.s, and in an area of the administrative county (including the areas of the county districts) the county council will become the local education authority for that area.

In the past the Part III authorities have levied their own rates in respect of elementary education, and the county council has in the past levied a rate for elementary education in respect of that part of the county which was not included in the area of a Part III authority.

When the new arrangement comes into operation there will be one rate levied for the whole of the county and the county council will precept on the former Part III councils 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 the rates may go up and in others they may go down. Some of the increases and decreases will be substantial and might cause a very serious grievance if, in fact, large increases were levied straight away.

To obviate this the scheme included in the Seventh Schedule to the Act will provide machinery so that any large increases or decreases in the rates will be made gradually.

If in a borough the education rate for elementary education was, say, 3s. 6d. in the pound before the Act came into operation, and the county rate after absorption of the borough were 2s. 1d. in the pound, the borough would *not* get the immediate reduction of 1s. 5d. but will get that benefit gradually.

Section 2 (3) of the *Rating and Valuation Act, 1925*, states "Every general rate shall be a rate *at a uniform amount in the pound* on the rateable value of each hereditament in the rating area," but this Section 110 of the *Education Act, 1944*, provides instead of this for a gradual reduction or increase, spread over not more than five years. If the above-mentioned borough were incorporated within a county where the rate for the whole area is 5s., there would not be an immediate increase of 1s. 6d. but this increase would take place gradually. (See Note on the Seventh Schedule for some illustrations of how this section and schedule may work.)

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 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, 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.

Orders made, or directions given, under the various sections of this Act are not irrevocable (like the famed "laws of the Medes and Persians"), whether the order or direction be made or given, by the Minister of Education, or by the Minister of Health (in connection with medical inspection and treatment); or by the L.E.A.

If any consultations are necessary, or consents necessary, for the making of an order, *the like consultations, or consents, will be necessary* for the making of any subsequent "order," or the giving of any subsequent "directions," when it is proposed that the previous "order" or "direction" shall be varied or revoked.

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.

Regulations are to be made by the Minister. These include, among others :—

Section 10. *Regulations requiring L.E.A.s to secure that the school premises of all schools maintained by them (whether county schools or voluntary schools) conform to such standards as may be prescribed.*

Section 33. Regulations concerning pupils requiring *special* educational treatment, and for approval of *special* schools.

Section 43. Regulations as to the maintenance, government and conduct of county colleges, and as to the further education to be given therein.

Section 45. Regulations for the form of college attendance notices, consultation and exchange of information between different L.E.A.s, certificates of exemption, etc.

Section 49. Regulations imposing on L.E.A.s the duty of providing milk, meals and other refreshment for pupils attending maintained schools and county colleges.

Section 53. Regulations empowering L.E.A.s to supply to pupils attending maintained schools or county colleges articles of clothing suitable for physical training (including footwear).

Section 69. Regulations as to the conduct of medical examinations and medical inspections and matters relating thereto.

Section 70. Regulations prescribing the particulars to be furnished to the Registrar by the proprietors of independent schools.

Section 80. Regulations for registration of pupils and young persons and for removal of a pupil's name from the school registers.

Section 81. Regulations empowering L.E.A.s to give assistance by means of scholarships and otherwise.

Section 83. Regulations concerning expenditure connected with educational conferences.

Section 100 (1). Grant regulations for payment of grants by the Minister of Education :—

(*a*) To L.E.A.s ;

(*b*) to others than L.E.A.s ;

(*c*) to enable pupils to take advantage of educational facilities.

(Under Section 100 (2) the Minister of Health will make regulations concerning grants for medical inspection and treatment.)

Section 101. Regulations concerning special financial provisions relating to Wales and Monmouthshire.

Under Section 118 (5) of the *Education Act, 1921,* any *regulations made by the Board for payment of grants* were to be laid before Parliament when they are made. Section 112 of this Act goes further than the 1921 Act by requiring that not only grant regulations but *all regulations* made under the Act shall be laid before Parliament for the specified period, with the further provision that Parliament *may* resolve that the proposed regulations be annulled. The section does not prescribe that a Resolution of Parliament would be necessary *to approve each set* of regulations ; for some, such as an order made under Part I of the First Schedule for the establishment of a Joint Education Board, it might be considered by the Minister as important enough to require a positive Resolution of the House, for it would be a regulation affecting local government of an area and the *setting up of a new authority* under the Act, while others of an administrative character could remain on the Table of the House so that any member would be able if he so wished to move a resolution *to annul them,* but such regulations would *not require a positive resolution of approval.*

113. Notices.—Any notice required or authorised by this Act to be served upon any person may be served by delivering it to that person, or by leaving it at his usual or last known place of residence, or by sending it in a pre-paid letter addressed to him at that place.

If any person who should have received a notice required or authorised under this Act states, in a case brought before the court, that he did not receive such notice, a proof will be accepted by the court that such notice was sent, if one of the methods prescribed in this section can be authenticated as having been adopted. E.g. This may be useful if a young person be brought before a court for neglecting to comply with a college attendance notice if there be a record in the office showing that such notice was sent (or proof that it was sent by registered post).

Section 26 of the *Interpretation Act, 1889,* states :—

> " Where an Act passed after the commencement of this Act authorised or required any document to be served by post, whether the expression ' serve ' or the expression ' give ' or ' send,' or any other expression be used, then unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting the letter containing the document, and unless the contrary be proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

114. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby 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 prepared in accordance with the provisions of the Fifth Schedule to this Act and adopted or deemed to be adopted thereunder ;

" Alterations ", in relation to any school premises, includes any improvements or enlargements which do not amount to the establishment of a new school ;

" Assist ", in relation to any school, college or institution has the meaning assigned to it by subsection (2) of this section ;

" Child " means a person who is not over compulsory school age ;

" Clothing " includes boots and other footwear ;

" Compulsory school age " 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 ;

" Former authority " means any authority which was a local education authority within the meaning of any enactment repealed by this Act or any previous Act ;

" Foundation managers " and " foundation governors " mean, in relation to any voluntary school, 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 this Act to " managers " or " governors " shall, in relation to any function thereby conferred or imposed exclusively on foundation managers or foundation governors, be construed as references to such managers or governors.

" Further education " has the meaning assigned to it by section forty-one of this Act ;

" 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 ;

" Junior pupil " means a child who has not attained the age of twelve years ;

" Local education authority " 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, the council of the county, and, in relation to a county borough, the council of the county borough ;

" Local education order " 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 ; and in relation to the area of any joint education board constituted under Part I of the First Schedule to this Act 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 has the meaning assigned to it by subsection (2) of this section ;

" Maintenance contribution " in relation to any voluntary school means a contribution payable under section one hundred and two of this Act ;

" Medical inspection " 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, 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 employed, or engaged, whether regularly or for the purposes of any particular case, by that authority ;

" Medical treatment " 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 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 ;

" Minor authority " means, in relation to any school maintained by the local education authority for a county, 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;

"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;

"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;

"Prescribed" means prescribed by regulations made by the Minister;

"Primary education" has the meaning assigned to it by section eight of this Act;

"Primary school" means, subject to the provisions of subsection (3) of this section, a school for providing primary education;

"Proprietor", 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;

"Provisionally registered school" means an independent school registered in the register of independent schools, whereof the registration is provisional only;

"Pupil", where used without qualification, means a person of any age for whom education is required to be provided under this Act;

"Registered pupil" 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" means an independent school registered in the register of independent schools, whereof the registration is final;

"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;

"Secondary education" has the meaning assigned to it by section eight of this Act;

"Secondary school" means, subject to the provisions of subsection (3) of this section, a school for providing secondary education;

"Senior pupil" means a person who has attained the age of twelve years but has not attained the age of nineteen years;

" Special agreement " means an agreement made under the provisions of the Third Schedule to this Act ;

" Special educational treatment " has the meaning assigned to it by paragraph (*c*) of subsection (2) of section eight of this Act ;

" Trust deed ", 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 ;

" Young person " means a person over compulsory school age who has not attained the age of eighteen years.

Many of the interpretations or definitions given in this Section 114 will be found to be of great assistance in the interpretation of various sections of the Act.

The definition of " *alterations* " will be of service in connection with consideration of the grant up to 50 per cent of the cost of alterations and improvements in voluntary schools which are requisite for them to comply with the Regulations of the Minister under Section 10.

If the managers or governors of a voluntary school are unable to find their share of the cost of reconstruction, the L.E.A. may have to take over the liabilities for alterations to the school buildings and the school may become a " controlled " school.

It may be noted that under Section 15 (3) (*a*) it is only alterations to the school *buildings* for which the voluntary school managers or governors are liable : the liability for alterations to the parts of the school premises which are not buildings (e.g., the playground) is a liability of the L.E.A.

When the wording of the definition of " *foundation managers* " and " *foundation governors* " was under discussion during the Committee Stage in the House of Lords, the Bishop of London stated :—

> It is often the case that the existing composition of managers and governors in accordance with the trust deed of the school is rather out of date and needs adjustment to new conditions. Since the time when many of the trust deeds were drawn up such things as parochial church councils, diocesan education committees and the like have come into existence, all of which might very well find place or representation on the body of managers or governors. . . . The essential thing is that the body of managers or governors shall *continue in suitable form* the original trust, and where that trust is a denominational trust, shall represent that denomination. The definition as now worded does secure the essential thing. Two things are secured by this—the first is that the character of a voluntary school is preserved and developed, the second is that the school is conducted in accordance with the provisions of any trust deed relating thereto. The essential thing is to be preserved and at the same time there will be a sufficient degree of flexibility in the constitution of the board of managers or governors.

In connection with the definition of " *Medical Treatment* " it was stated by the Earl of Selborne " In a number of cases arrangements have been made by L.E.A.s, with the approval of the Minister, for various forms of treatment—dental, X-ray, and so on—to be carried out at private surgeries. The L.E.A. may pay for treatment at private surgeries only where the arrangements have been approved by the Minister under Section 79 ;

the L.E.A. would have no duty *or power* to pay in cases where the parents took a child to a private surgery outside the scope of the approved arrangements."

"*Former Authority*" refers to a local authority which was the local authority for elementary education only, under Part III of the *Education Act, 1902*, but which is no longer a local education authority.

The definitions of "*junior pupil*," "*senior pupil*" and "*young person*" will be of service in deciding questions whether a child should attend a primary school, a secondary school or a county college. Under Section 94 a birth certificate may be obtained for *any* educational purposes at a cost of sixpence.

Subsection (5) below explains when a pupil may be deemed to have reached any specified age.

"*Minor Authority*" does not refer to a *county borough* but to the authority for a non-county borough, or an urban district or a rural parish, whose area is within the area of the administrative county.

Section 305 of the *Local Government Act, 1933*, defines "*a local government elector*" 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.*"

(2) For the purposes of this Act :—

(*a*) 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 this Act or of any special agreement made thereunder are payable by the managers or governors of the school; and the expression "maintain" shall be construed accordingly; and

This subsection gives particulars of the meaning to be attached to the word "maintain" in connection with a school or college. If the L.E.A. "maintains" a school it is responsible for all the day-to-day expenses of carrying-on the school or college (including the salaries of teachers and wages of employees) *except in the case of an aided or special agreement school, any expenses for which the managers are liable.*

Section 15 (3) gives some details of the expenses for which the managers or governors of an aided school or a special school are liable. They include :

(*a*) Any expenses due to discharging liabilities previously incurred in connection with the school;

(*b*) any expenses incurred in effecting such alterations to the school *buildings* as may be required by the L.E.A., for the purpose of securing that the school premises shall conform to the standards prescribed by the Minister in the regulations made by him under Section 10; and

(*c*) Any expenses incurred in effecting repairs to the school *premises*, except repairs which are excluded from their responsibility by paragraph (b) of Section 15 (3).

The repairs so *excluded* are—

(i) repairs to the school playground or playing fields;

(ii) repairs to the *interior* of any buildings forming part of the school premises;

(iii) repairs necessary in consequence of the use of the premises (as authorised by the L.E.A.) for purposes other than the school.

After April 1st, 1945, in accordance with the above, the L.E.A. would be responsible for the alterations or repairs to the playground in order that it shall conform to the regulations under Section 10 as regards *size or area* and general conditions.

The question whether a school will become an aided school or a special agreement school will not be finally determined until the Minister makes an order under Section 15 (2) defining the category of each particular voluntary school.

The order, defining the category of a voluntary school, *may*, in many cases, not be issued until about 18 months after April 1st, 1945.

Under the transitional provisions of Section 32, until the above-mentioned order is issued " the school shall be maintained in like manner as it was immediately before " (April 1st, 1945). The L.E.A. will therefore not have a duty to undertake the new duties for which they become responsible under this subsection until the Order of the Minister comes into operation. Section 32 (1) (*c*) states that during the interval the school shall be maintained *in like manner as it was immediately* before April 1st, 1945. This practically keeps in operation *by custom* the conditions of Section 29 (2) (*d*) of the *Education Act, 1921* (although that Act is repealed from that date by the Ninth Schedule) except that the L.E.A. " shall not require any alterations to be made to the school premises " as that Section of the 1921 Act specifies. The L.E.A. will have the duty of dealing with damage due to " wear and tear " in any room in the schoolhouse (e.g., if an accident happens, due to a much worn block floor of a room the L.E.A. would be liable).

Similarly, the L.E.A. have *power* to effect improvements to a playground of a voluntary school (see Note on Section 15 (3)), and where such improvements are necessary they may carry out these improvements, either *paying the whole cost thereof* or charging such proportion of the cost to the managers as they may have done in the past. (In some areas the L.E.A. have paid 50 per cent of the cost of improvements to voluntary school playgrounds.)

There may be some confusion between the terms " transferred school " and " substituted school."

1. *A transferred school* is an existing school which is transferred to a fresh and more suitable site. Such a school is not considered to be a new school, but *the old school in a new place* and the construction of the school is considered as *alterations* to the existing school and consequently the responsibility for the cost of the site falls on the L.E.A.

2. A *substituted school* is a school which it is proposed [under Section 13 (2)] to establish as a *voluntary school* in substitution for another voluntary school, which will be discontinued.

A substituted school is a new school and the cost of the site will be the responsibility of the managers or governors.

3. A *school for displaced pupils* is a new school and the responsibility for the site will be on the managers or governors as in the case of a school substituted for another school or schools. (*See Note on Section 103.*)

(*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 by the authority.

Subsection (2) (*a*) helps to explain what is meant by the phrase " a school *maintained* by the Local Education Authority.

Subsection (2) (*b*) similarly helps to explain what is included in the phrase " a school *assisted* by the L.E.A.

Instead of being responsible for, and paying, the *day to day maintenance charges* of a school or training college or an educational institution (which provides educational facilities such as assist the L.E.A. to carry out their statutory obligations in their area), the L.E.A. may make a grant to the proprietor of an independent school, or to the persons maintaining the training college or other educational institution, to assist them to provide the educational facilities therein. The payment of such a grant is one form of assisting the school, college or institution. Another form of assistance may consist in paying the charges for all pupils from their own area whom the L.E.A. send. If several L.E.A.s each send pupils in need of special educational treatment (blind, etc.) to a special school or institution provided voluntarily, each L.E.A. paying the charges for their own pupils, this payment is thereby deemed to be *assisting* the Institution by each L.E.A. so doing.

(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 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 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.

The proviso to Section 11 (2) refers to an all-age school which may have to be continued as a primary school *for a period,* if it is not possible to complete the transfer to the statutory system of education for that particular school by the date fixed therefor in the " local education order."

Section 31 (2) includes the transitional provisions which will operate until the " local education order " for that area comes into operation. a " school which was used for providing primary and secondary education indiscriminately (i.e., pupils below 11 and those from 11 to 14 in the same school) shall be managed and conducted as a *primary* school.

This subsection 114 (3) states that while this transitionary state exists, references in this Act to secondary schools will have no reference to such a combined school. There will be no *articles of government* for such a

school, nor any secondary school *governors* appointed. While it is deemed to be a primary school it will work under a body of managers in accordance with an *instrument of management*.

If, however, an *existing* grammar school has a separate junior or preparatory department, the Minister may direct that this department, although it may have some under-11 pupils taught therein, shall be deemed to be a secondary school, with articles of government and a body of governors therefor.

(4) Where before the date of the commencement of Part II of this Act a syllabus of religious instruction had been adopted by a former authority 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 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 and adopted or deemed to be adopted thereunder or until the expiration of two years after the said date whichever first occurs.

This subsection provides for the continuance *for a limited period* of the existing syllabus of religious instruction in cases where local education authorities have already adopted a syllabus. Where they have not, it will be for the Conference referred to in the Fifth Schedule either to frame their syllabus before 1st April, 1945, or, as an interim measure, to adopt an existing syllabus or syllabuses.

(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.

This subsection is wider and more comprehensive than as given in any previous Acts, for it includes children in different types of schools as well as county colleges, instead of this rule being restricted to children attending a *public elementary school*. (See Note on Secton 35 above.)

The subsection will include pupils attending an independent school as well as a school maintained by the L.E.A.

Section 30 of the *Children Act, 1933*, states :—

" A person who is attending a *public elementary school* and who attains the age of 14 years during a school term shall not be deemed to cease to be a child until the end of the term."

In a note on this latter section (in my edition of the *Children's and Young Persons Act, 1933*, on p. 133) I stated : " Unfortunately, however, this only applies to children attending *public elementary* schools, so that a child, attending any school other than a public elementary school may leave for work on his 14th birthday."

I further added : " The writer of these Notes endeavoured (while the 1933 Bill was before the House of Lords) to have this anomaly removed by suggesting the omission of the words ' public elementary ' from Sect. 30, but was informed by the Parliamentary Secretary to the Board of Education that

this could not be done. The 1933 Children and Young Persons Bill, he said, was merely a Consolidation Bill, and the amendment I had suggested would make a 'material change' in the law, which was not permissible in such a Bill."

Similarly, in July, 1943, the Home Office, in reply to a question, stated: "The Secretary of State concurs in the view that this [end of term] does not apply to children who are attending secondary and junior technical and art schools" who have attained the age of 14.

In *Re Shurey*; *Savory* v. *Shurey*, [1918] 1 Ch. 263; 118 L.T. 355, it was ruled that "the law for this purpose takes no cognisance of part of a day, consequently a person attains the age of 21 years or 25 years or any specified age on the day preceding his 21st, 25th, or any other birthday as the case may be."

This recognises that as the actual day of birth was the first day of a child's first year, so *the day before* his second birthday is the last day of that year, and each succeeding birthday is the first day of the next year of his age.

The words "*during* the term" may require consideration. The word "during" means "throughout the whole continuance of" (*Oxford English Dictionary*). The question sometimes arises: Is the first day of a term *during* the term? In accordance with the case quoted above, the law takes no cognisance of part of a day, and this would mean that the first day of a term legally commences just after midnight of the preceding day. If, therefore, "during" means "*throughout* the whole continuance of," the first day of the term must be part of the term.

If, therefore, the birthday of a child or young person occurs on the first day of the term, the child attained the age he has reached on the previous day, and consequently could be exempt from attendance during that term (i.e., if a term commences on 1st April and his 18th birthday is on 1st April, he attained the age of 18 on 31st March).

If his 18th birthday occurred on the second day of the term, he attained the age of 18 on the preceding day, the first day of the term (*during* the term) and must attend the county college to the end of that term.

This applies to the term of the school or college the person is attending. If he is attending a school or a county college in an area different from the one in which his parent or guardian resides, the terms may differ from those in what may be described as his home area, but it is the term of the school or college he is actually attending which is referred to in this subsection.

This is analogous to cases under the Workmen's Compensation Acts, where an injured workman is entitled to compensation if his injury arose "out of and in the course of his employment" even if the injury were received during the first few minutes of the commencement of his employment. It occurred *in the course* of his employment.

(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, shall be deemed to be over compulsory school age, and any person who after the said 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.

This subsection is a transitory provision. A child who has left school *at 14* before the age is raised to 15, will not be brought back to school should he be under 15 when the change in the termination of the compulsory school age takes place.

This is transitory in that it does not apply to more than one or two years, and in the case of county colleges it does not apply to more than three years.

This, however, does not preclude any child or young person, legally exempted hereby, from attending voluntarily but there would be no compulsion to attend.

(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 have ceased by reason of war damage, 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, 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.

This subsection makes provision for schools which on account of war conditions were *not in actual use* as public elementary schools *immediately* before the date of commencement of Part II of this Act.

Schools which were recognised as public elementary schools under previous Education Acts may have been temporarily discontinued for various reasons due to war conditions, these would include :—

(*a*) schools destroyed or rendered unfit for use as schools on account of war damage ; or

(*b*) schools taken over temporarily for reasons connected with the war, and used for other purposes, e.g., connected with air-raid precautionary measures ; or

(*c*) temporarily discontinued owing to evacuation of children formerly in attendance.

These schools for the purposes of this Act will be *deemed to have been in use* as public elementary schools *immediately before the date* of the commencement of Part II of this Act, and the transitional provisions of Subsection (2) of Section 31 will apply to them, whether they are in the area of a former authority or the new L.E.A. for that area.

The words " unless it has been closed in accordance with those enactments " will obviate any danger of a school discontinued by a L.E.A. under Section 17 (4) of the *Education Act, 1921*, or a school having been declared by the Board of Education to be unnecessary under Section 19 (1) of the 1921 Act, being affected by this subsection.

(8) In this Act, unless the context otherwise requires, references 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.

This provides for references to any enactment, or provisions of any enactment, being construed as referring to such enactment or provision *as amended* by any subsequent enactment. E.g., Section 78 of the *Unemployment Insurance Act, 1935*, is to be construed as a reference to that section as amended by Part II of the Eighth Schedule to this Act.
(See Appendix A for several Acts or sections of Acts *as amended* by the Eighth Schedule.)

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, or on parents, 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 employed therein, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary.

Persons in the service of the Crown are exempted from the provisions of this Act *if the Minister certifies* that by reason of the arrangements made for the education of such children or young persons employed in any service or capacity under the Crown, the exercise of the powers or duties of the local education authorities or of parents is unnecessary. If a young person is employed, say, in the Post Office, and special arrangements are made for the education of that young person at such times as may be most convenient for him, considering his Post Office duties, the Minister might certify that the exercise of the power of the L.E.A. to compel him to attend a " county college " by means of a " college attendance notice " is unnecessary. Similar arrangements might apply to messengers in the Government offices or to the younger members of the clerical Civil Service staffs. It is hoped that this section may not be made use of to take boys or girls of compulsory school age from a secondary school for, say, Post Office work or other, before the terms for which they were admitted for attendance thereat are completed.

116. Saving as to persons of unsound mind, inmates of penal establishments, etc.—No power or duty conferred or imposed by this Act on the Minister, on local education authorities, or on parents, 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.

Persons who are of unsound mind, or who are detained under an order of a court are exempted from the provisions of this Act.

This Section exempts people under the Mental Deficiency and similar Acts from penalties that might fall on them if they do not discharge their duties as parents or in other ways under this Act

117. Application to London.—(1) For the purposes of the application of this Act to the County of London, references in the definition of the expression " minor authority," 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.

(2) Subsection (4) of section fifty-four of this Act shall, in relation to 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*.

(3) Before approving any proposals submitted to him under section thirteen of this Act with respect to any school 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.

Adjustments of the provisions of this Act to the special conditions of London are made by this section.

The London County Council will be the L.E.A. for its own area. The Common Council of the City of London, and the Councils of the Metropolitan Boroughs, will be deemed to be the " minor authorities " referred to in this Act, and have statutory powers to appoint a proportion of non-foundation managers for voluntary primary schools, etc.

If the London County Council, as the L.E.A. for the area, submits any proposals to the Minister under Section 13 of this Act :—

(*a*) to establish a new county school ; or

(*b*) to maintain as a county school any school which at the time being is not such a school ; or

(*c*) to cease to maintain any county school, or (except in certain conditions) any voluntary school

before approving any such proposal concerning any school, which is, or is to be, within the area of the City of London, the Common Council of

the City of London shall have an opportunity of making representations to him.

If the proposal relates to any school which is, or is to be, within the area of any Metropolitan borough, the council of that Metropolitan borough similarly shall have an opportunity of making representations to the Minister with respect to the proposals.

With regard to the use of premises and appliances for cleansing persons or clothing, a claim (if any) for such use under Section 54 (4) should be made to the appropriate sanitary authority in the London area.

(4) For the purposes of the application of sections eighty-eight, ninety, ninety-three and one hundred and fourteen of this Act in relation to the local education authority 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.

(5) Parts I and III of the First Schedule to this Act shall not apply to the London County Council.

Section 88 of this Act refers to the appointment of a chief education officer on similar lines to the appointment of other chief local government officers made in accordance with the provisions of the *Local Government Act, 1933.*

For London, references to the *London Government Act, 1939*, take the place of the references to the *Local Government Act, 1933.*

See Appendix A for Sects. 163, 164 and 165 of the *Local Government Act, 1933* ; and Sects. 106, 107, 108 and for some definitions from Sect. 206 of the *London Government Act, 1939.*

Part I of the First Schedule to this Act refers to the formation of a *Joint Education Board* as the L.E.A. for the area of two or more county councils.

This procedure is definitely stated to be *not applicable* to London, and Part I of that schedule shall not apply thereto.

This precludes the Minister from forming a Joint Education Board for London and, say, Middlesex.

Similarly, Part III of the same First Schedule, which deals with the *delegation of functions of L.E.A.s to Divisional Executives*, will not apply to London (just as it does not apply to any county borough).

118. Application to Isles of Scilly.—The Minister shall by order provide for the application of this Act to the Isles of Scilly as if those isles were a separate county, 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.

The scattered nature of the Isles of Scilly will preclude the application of many of the provisions of this Act thereto. The Minister will therefore have to issue an order, treating these Isles as a county, and modifying, where necessary, any parts of the Act. Only five of the 40 islands are inhabited. The population of the county of the Isles of Scilly in 1931 was 1,740 and the public elementary school population was 185.

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.

Part I of this Act dealing with *central administration* came into operation on 3rd August, 1944, the day when the Act received the Royal Assent.

On 10th August, 1944, Mr. Butler was declared by an Order in Council to be the Minister of Education and the Board of Education became the Ministry of Education. (See Note on Section 121.)

Part V of the Act, which deals with various matters supplemental to the general provisions of the Act, was not delayed but came into operation from 3rd August, 1944.

Part II of the Act deals with the statutory system of education.

The changes in *local* administration of education, the improvements necessary in school buildings, the construction of " county colleges " and other educational institutions which may be required, the training of a sufficient supply of efficient teachers to teach in the reorganised schools which the Act envisages, all these will require time for preparation, so Part II of this Act will not come into operation until 1st April, 1945. The Minister has power (under Section 108 in Part V of the Act) to *facilitate* the commencement of Part II where possible and desirable, and Circular 1 (15thAugust, 1944) stated that an order postponing the raising of the school-leaving age to 15 will be issued, probably for extending for a year. Similarly, Part IV of the Act will not come into operation until 1st April, 1945. Part III of the Act deals with independent schools, their registration and inspection. Owing to the fact that the inspection of these schools will require an increase in the inspectorate under the Minister, no definite date has been fixed for the coming into operation of this Part of this Act.

When Part II of the Act comes into operation on 1st April, 1945, it will be the duty of L.E.A.s (Section 8) to secure that primary and secondary education are provided in separate schools. In a number of cases this will not be possible at once, and during the transition period, according to Section 31, an all-age school, which cannot be changed over at once, will be managed and conducted as a primary school. During the period of transition " development plans " will be submitted by the L.E.A.s to the Minister. Based on these plans, the Minister will issue " local education orders." Each school which is at present a non-provided school

will be maintained as a voluntary school until the " development plan " and " local education order " fixes its type. The school meanwhile will be deemed to be an " aided " school, with the same body of managers, and will be conducted in the same manner as it was conducted before 1st April, 1945, the managers executing repairs, etc., as at present until, under Section 15, a voluntary school is classed as an aided or special agreement school, when the provisions of Subsection (3) of Section 15 become applicable as regards repairs and alterations. (See Note on Section 114 (2).)

120. Amendment of enactments.—(1) On and after the date of the commencement of Part II of this Act 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 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 ;

(*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 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 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.

This subsection correlates some of the nomenclature of earlier Education Acts with the nomenclature of this Act :—

Earlier Acts	*This Act*
For—	Substitute—
(*a*) Elementary school, or public elementary school.	(*a*) County school or voluntary school as the context requires.
(*b*) Schools for blind, deaf, defective or epileptic children.	(*b*) Special schools.

Earlier Acts	*This Act*
For—	Substitute—
(*c*) Managers of a school	(*c*) Governors of a county secondary school or a voluntary secondary school (but managers of primary schools remain "managers").
(*d*) Elementary or higher education	(*d*) Education provided under Part II of this Act.
(*e*) Local education authority or local education authority for elementary education or local education authority for higher education—	(*e*) Local education authority.

(2) In relation to any young person 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.

This refers to offences under this Act, or under Section 78 of the *Unemployment Insurance Act, 1935*. Under Section 52 (3) of the *Children and Young Persons Act, 1933*, a young person ("one who has attained the age of 14 but is under the age of 17") shall not be imprisoned for an offence, or committed to prison for non-payment of a fine or damages or costs, "unless the court certifies that he is of so unruly a character that he cannot be detained in a remand home, or is of so depraved a character that he is not fit to be so detained." (This subsection changes the definition of a young person under those Acts by substituting "18" for 17 therein.)

Section 54 of the *Children and Young Persons Act, 1933*, substitutes custody in a remand home for imprisonment.

Section 78 of the *Unemployment Insurance Act, 1935* (see Eighth Schedule to this Act) deals with fines and imprisonment for such offences as contempt of court by refusal to attend an approved course or a county college.

These references now deal with young persons up to the end of the college term in which their 18th birthday occurs.

(3) The enactments mentioned in the first column of the Eighth Schedule to this Act shall, except in so far as any of them extend to Scotland, 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 comes into operation.

This gives effect to some of the amendments included in the Eighth Schedule to this Act. The amendments referred to in Part I of this schedule should come into operation on 1st April, 1945. As, however, in accordance with Circular 1 (15th August, 1944) of the Ministry of Education, the upper limit of the compulsory school age will not be raised to 15 on that date, the age below which a child cannot be employed will *not* be raised from 12 to 13 on that date.

The amendments referred to in Part II of this schedule come into operation when Section 44 of this Act is brought into operation the section which creates the duty of attendance at young people's colleges in accordance with college attendance notices.

(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, the following provisions of this Act, that is to say :—

(*a*) subsections (3) and (4) of section six ; and

(*b*) section ninety-seven ;

shall have effect as if those functions had been exercisable under the Education Acts, 1921 and 1939 ; and in relation to any such functions, the provisions of section ninety-six and of subsection (3) of section ninety-eight of this Act shall have effect as if for the references therein to the Minister of Education there were substituted references to the Secretary of State.

The powers and duties under the *Children and Young Persons Act, 1933*, so far as they relate to children, are by Section 96 of that Act conferred or imposed on local education authorities for elementary education. When an authority ceases to function as a local education authority for elementary education only, these powers and duties are transferred to the new L.E.A. for their area as constituted under this Act (i.e., such powers and duties of the authority of a county district devolve upon the county council of the area in which the county district is situated).

Subsections (3) and (4) of Section 6 of this (1944 Education) Act refers to the transfer of property, etc., and of officers from the county district to the county council provided these have been " solely or mainly " connected with education work under the Education Acts, 1921 to 1939.

This Subsection (4) of Section 120 of this Act states that officers or property which have been connected " solely or mainly " with functions of the authority for a county district exercisable under the *Children and Young Persons Act, 1933*, shall be deemed to have been solely or mainly connected with functions exercisable under the Education Acts, 1921 to 1939.

This ensures that officers whose employment has been chiefly in connection with these duties shall be equally entitled to compensation for loss of office as if they had been employed definitely under the Education Acts, and consequently Sections 96 and 98 of this Act will be applicable to them but with references to the " Secretary of State " being substituted therein for references to the Minister of Education.

As the *Children and Young Persons Acts, 1933 to 1938*, are administered

by the Home Office, it is necessary to substitute the Secretary of State for the Home Department for the references to the Minister of Education in those sections.

(5) For the purposes of any bye-laws under Part II of the Children and Young Persons Act, 1933, 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.

Byelaws made by the council of a county district under Sections 18 to 21 of the *Children and Young Persons Act, 1933*, which were in force immediately before April 1st, 1945, in relation to the area to which they extend, remain in operation on and after that date as though they had been made by the county council to whom their duties have been transferred. The council of the county may then vary or revoke the byelaws, bearing in mind Subsection 3 above and the Eighth Schedule, that when the upper limit of the compulsory school age is raised to 15, the minimum age for employment will be raised to 13.

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 of a Minister of Education took effect; the enactments mentioned in the first column of Part I of the Ninth Schedule to this Act 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, as from the date of the commencement of Part II of this Act; 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 comes into operation

Provided that—

(*a*) any regulation Order in Council order 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 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.

Section 83 of the *Elementary Education Act, 1870*, states: "All orders, minutes, certificates, notices, requisitions and documents of the Education Department, if purporting to be signed by some Secretary or Assistant Secretary of the Education Department, shall, until the contrary is proved, be deemed to have been so signed, and to have been made by the Education Department, and may be proved by the production of a copy thereof purporting to have been so signed."

Also *The Documentary Evidence Act, 1868*, shall apply to the Education Department. (See Note on Section 3 above.)

Section 45 of the *Elementary Education Act, 1876*, stated: "The provisions of the *Elementary Education Acts, 1870*, with respect to orders and documents of the Education Department, shall apply to all orders and documents of the Education Department under this Act."

These sections, together with Section 7 of the *Board of Education Act, 1899*, are replaced by Section 3 of this Act.

(See also Section 26 of the *Interpretation Act, 1889*, in Note on Section 113 above.)

On August 10th, 1944, by an Order in Council His Majesty appointed the Rt. Hon. R. A. Butler, M.P., as Minister of Education. The Board of Education from that date ceased to exist for the *Board of Education Act, 1899*, was thereby repealed. Section 1 of the *Education Act, 1921*, which refers to the continuance of a Board of Education, was also repealed, as also Section 2 of the 1921 Act which referred to the *continuance* of a consultative committee (appointed under the Board of Education Act, 1899) was repealed. The remainder of the 1921 Act (with other Acts referred to in Part I of the Ninth Schedule) will be repealed from April 1st, 1945.

122. Short title and extent.—(1) This Act may be cited as the Education Act, 1944.

(2) This Act shall not extend to Scotland or to Northern Ireland.

SCHEDULES

FIRST SCHEDULE

(SECTION 6)

LOCAL ADMINISTRATION

PART I

JOINT EDUCATION BOARDS

1. Where it appears to the Minister that the establishment of a joint board as the local education authority for the areas of two or more councils to whom this Part of this Schedule applies would tend to diminish expense or to increase efficiency or would otherwise be of public advantage, the Minister may by order 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, unless all the councils for the areas of which the board is o 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.

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 (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, and for the adjustment of accounts and apportionment of liabilities) 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 by reason of the determination of his appointment 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 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 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, otherwise than as a local education authority.

4. An order constituting a joint education board shall be laid before Parliament as soon as may be after it is made.

5. This Part of this Schedule applies to the council of any county, 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.

FIRST SCHEDULE

This Education Act endeavours in various ways to establish a partnership between the central authority and the local authority. The First Schedule deals with *local administration.*

Section 6 of the Act establishes the council of a county or of a county borough as the local education authority each for their respective area.

Under the 1902 Act there were 315 L.E.A.s created: of these 169 were authorities for elementary education only. In future there will be not more than 146 L.E.A.s. The London C.C., 62 county councils with 83 county borough councils. The formation of joint education boards may reduce the number still more.

Part I of the First Schedule deals with the establishment of joint education boards to deal with *all* the educational functions of the separate authorities forming the joint board (except the power to borrow or rate).

Part II of the First Schedule deals with the delegation by L.E.A.s of *some* functions to education committees.

Part III of the First Schedule deals with the delegation by the L.E.A. of an administrative county of certain functions to divisional executives.

PART I

1. Where the Minister is of opinion that the establishment of a joint board as the L.E.A. for the area of two or more county or county borough councils

would tend (i) to diminish expense; or
(ii) to increase efficiency; or
(iii) otherwise would be to the public advantage,

he may make an order constituting a joint education board for the combined areas, and directing that the board shall be the L.E.A. for the areas of the councils concerned.

Before making such an order, he must hold a local inquiry (unless *all* the councils to be conjoined for educational purpose have consented to the order being made).

After making the order, this order shall be laid before Parliament *as soon as may be* after it is made.

2. A joint education board will be a body corporate with perpetual succession and *having a common seal.* The board will have power to hold land for educational purposes without *licence in mortmain.* (See Note on Section 87 above.)

The corporation of an administrative county or of a county borough has a seal, which when used, proves an authentic evidence of what the corporation have done.

The use of a seal is not merely a relic of antiquity, of times when many could not write but signified their agreement to a document by impressing their private seal on wax adhering to the document. The legislature has made provisions for the protection of ratepayers and others who have to act through the agency of a representative body, by requiring the observation of certain solemnities and formalities which require deliberation and reflection. That is the importance of a seal.

3. The order constituting the joint education board may deal with

(i) the appointment and term of office of members of the board; and
(ii) the transfer of officers, property and liabilities, with adjustment of accounts and apportionment of liabilities;
(iii) officers of a county council whose powers and duties as a L.E.A. are transferred to a joint board will be protected in the event of their offices being abolished or their emoluments being reduced; and
(iv) *with the consent of the councils,* whose functions are transferred, the transfer to the board of functions under the *Children and Young Persons Acts,* 1933 and 1938, other than those of an education authority.

(See Appendix A for Section 293 of the *Local Government Act, 1933.*)

A joint education board, in addition to providing for the *joining together* of the councils of counties or county boroughs which are L.E.A.s under Section 6 of this Act, may include in the union a non-county borough which is not a L.E.A. under Section 6 of the Act, if the population of the non-county borough were not less than half of the population of the county in which the borough is situated.

N.B.—The population of Cambridge at the last census before the passing of this Act was more than half of the population of the county of Cambridge. The population of Peterborough was more than half that of the Soke of Peterborough.

Circular 1 of the Ministry of Education dated August 15th, 1944, stated: "(2) Section 108 [of the Act] empowers the Minister to exercise certain

functions, so far as he thinks it necessary, to facilitate the bringing into operation of Part II of the Act, which comes into force on 1st April, 1945. The Minister regards it as important that the new machinery for local administration for which Section 6 and the First Schedule provide should be set up so as to be ready to function by that date, when the new local education will come into being.

" (3) With this object in view, the Minister is about to communicate with those authorities to whose areas he proposes to apply the provisions of Part I of the First Schedule."

PART II

EDUCATION COMMITTEES

1. Every local education authority shall, in accordance with arrangements approved by the Minister, 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 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 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 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 and persons acquainted with the educational conditions prevailing in the area for which the committee acts.

6. At least a majority 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 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 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 of an education committee of the local education authority shall be open to the inspection of any local government elector 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 constituted in such manner as the committee may determine; and

(*b*) authorise any such sub-committees 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 is referred to any committee of the authority other than an education committee.

PART II

EDUCATION COMMITTEES

The local education authorities constituted by Section 6 of this Act, and a joint education board constituted under Part I of the First Schedule of this Act, will as a rule delegate many of their functions (except borrowing money or raising a rate) to an education committee. These excepted powers are democratically reserved to the bodies which are elected by the people.

In cases where L.E.A.s may not be in favour of transferring *all* their powers to a joint education board, it may be advantageous to be able to join with other L.E.A.s to deal with *some* of the questions of common interest.

E.g., a number of adjacent county boroughs may agree to form a joint committee to deal with technical education in their respective areas.

In such a case, if the Minister considers it expedient to do so, he may, after consultation with the authorities, issue an order establishing a "joint education committee."

In the case of an order establishing a joint education *board*, the Minister will hold a local inquiry (unless the constituent authorities for the proposed board consent to the order being made).

In the case of an order establishing a joint education *committee*, the Minister consults with the authorities and does not necessarily hold a local inquiry.

A joint education *board* will deal with *all* the educational functions of the constituent councils in the area of the board.

A joint education *committee* will deal with *some* of the educational functions, such as may be specified in the order of the Minister.

Every education committee (including a joint education committee) shall include :—

(*a*) persons of experience in education ; and

(*b*) persons acquainted with the educational conditions prevailing in the area for which the committee acts.

There is no restriction in this Part of this Schedule as to how many persons of each of the categories just mentioned there must be, the only point stated that a *majority of the education committee must be members of the authority.*

There is no reference here to the L.E.A. formulating a " scheme " for the constitution of their education committee, which scheme after approval by the Ministry of Education, would have effect *as if enacted* in the 1902 Education Act itself. (Section 21 (3) of 1902 Act.)

On 1st April, 1945, when Part II of this Act comes into operation, the 1921 Act will be repealed, under Section 121 and the Ninth Schedule of this Act, and all " schemes " for the constitution of education committees will be repealed thereby, so that persons (such as persons representing, or nominated by, religious bodies or teachers' associations) need not necessarily be reappointed after the next election which follows 1st April, 1945 (i.e., after 9th November, 1945, in a county borough).

If such persons are reappointed they would be appointed as " persons of experience in education " or persons with knowledge of local educational conditions, and not as nominees of any particular association.

The 1902 Act, and later the 1921 Act, specified that provision must be made for the inclusion of *women* as members of the education committee. This is omitted in the present Act, but this omission does not preclude their appointment, it brings them into line with the men. They *may* be reappointed as persons of experience in education, or as persons with knowledge of local educational conditions. As mentioned, the *majority* of the members of every committee of a L.E.A. must be members of that authority.

This does secure democratic representation. If the authority wish to make a scheme providing that two-thirds or three-quarters of their education committee shall be members of the authority, it is open for them to do so, but it is not always possible to secure so large a proportion of members of the council so really keen on the work as to make up two-thirds as members.

Some authorities endeavour to secure their position by a standing order which provides that there must always be a majority of members of the authority present when a decision is taken. In practice it is frequently found that owing to the large numbers of committees of a council on which members may be serving, this tends to delay matters considerably if that particular standing order be enforced. In the majority of cases the difficulty

is satisfactorily met, without such a standing order, by *having the proceedings of the education committee subject to the approval of the council.* It is entirely a matter of local administration.

In one scheme which proposed that an education committee of 33 members should include the Mayor of the county borough, the Chairman of the finance committee and 15 members of the council, the Board of Education refused to approve the scheme on the grounds that although the Mayor of a county borough is usually a member of the council, as also the Chairman of the finance committee, yet there is nothing to compel the council to elect one of their own members as Mayor, and if on some special occasion some influential person in the county borough should be elected as Mayor, he would be a member of the education committee *ex officio* and there might be 16 members of the council (including the Chairman of the finance committee) and 17 non-members, which would not be in accordance with the Act, there would on this occasion not be a majority of the council as members of the education committee.

Ultimately a scheme was adopted which provided for a committee of 33 with 19 members of the council *including* the Mayor and the Chairman of the finance committee.

The majority of the committee must be members of the body which represents the people to prevent any measure being adopted which cannot be said to represent the wishes of the people.

Analogous to this we may note the arrangements for ensuring that when a measure is carried in the House of Lords it shall represent the wishes of the House and not merely those of a few members.

Standing Order XXIII of the House of Lords states :—

If upon a Division upon any stage of a Bill it shall appear that 30 Lords are not present in the House, the Lord Speaker shall declare the question *not decided*, and the Debate thereon be adjourned to the next sitting of the House ; and if such Division take place when the House is in Committee, the Chairman shall declare the question *not decided*, whereupon the House shall resume and shall be again in Committee at the next sitting of the House.

Every L.E.A. must consider a report from their education committee before exercising their functions with respect to education unless the matter is urgent, or has been sufficiently considered or reported upon by a divisional executive established under Part III of the First Schedule.

The L.E.A. may authorise their education committee to exercise on their behalf any of their functions *except the power to borrow money or raise a rate.*

The extent to which the committee are authorised to exercise the functions of the L.E.A. will have a considerable bearing on the ultimate powers of the education committee, and the type of report the committee will make to their superior council, whether this shall consist of recommendations which they suggest the council should authorise them to carry out, or whether the report will be a record of what the committee have already carried out.

Custom as to delegation of powers has varied in the past. In some county areas where the county council only met quarterly, the education committee reported *every three months* on what had taken place. In some cases they submitted an estimate of their probable expenditure for the following three months. In many county boroughs the committee have reports from their education committee, presented in the form of the minutes of the committee, which, if approved by the council, become the minutes of the council, and may *thereafter* be acted upon by the committee. If some particular minute of the committee should be referred back for further consideration, *only the minutes approved* become the

minutes of the council, and can be acted upon. If the matter be urgent the council may substitute a minute of their own for some particular minute of their committee, this substituted minute will then be the one to be acted upon. This substitution, however, will not alter the minutes of the committee which form a *record of the proceedings of that committee*, and which should be signed at *their* next meeting, if approved by them as a *correct record* of their proceedings.

Paragraph 11 is intended to prevent disputes as to which committee shall have authority to deal with certain matters. The council may have duties under enactments other than the Education Acts.

See also the Note on Sect. 2, and the Note on the *Ministry of Agriculture and Fisheries Act, 1919*, in Appendix A.

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 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 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 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 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 has, before the first day of October nineteen hundred and forty-four, 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 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 on the rolls of the public elementary schools 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, is satisfied that by reason of special circumstances 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 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.

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 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.

8. Every scheme of divisional administration shall—

(*a*) provide for the constitution of every body which is to be a divisional executive for the purposes of the scheme, except where the scheme provides 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 provisions 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 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 estimate 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 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, 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 of a divisional executive shall be open to the inspection of any local government elector 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.

PART III

Part III of the First Schedule attempts to evoke and maintain *local* interest in various parts of an administrative county. The council for the area of the administrative county will be the L.E.A. for their area, but may divide their area into sections and delegate some of their functions to bodies appointed to deal with details of primary and secondary education, each in their particular district of the county *to be administered for the county L.E.A.* These bodies will include persons who have a special knowledge of the circumstances of their own division of the county.

> Schemes under Part III of this Schedule for delegation of powers do not apply to county boroughs, so that it will not authorise, say, the L.E.A. for the City of Birmingham, to delegate part of their duties to bodies acting on their behalf for various parts of the city, yet there is nothing to prevent that education committee from appointing sub-committees to deal with, say, school attendance, or staffing problems, or management of groups of schools, etc., for various parts of the city, but reports of the activities of these sub-committees should come to the education committee for approval, before being included in the Report of the Education Committee to the city council.

As soon as may be after the commencement of Part II of this Act (1st April, 1945) every L.E.A. to whom this Part of the First Schedule applies, must review the circumstances of every part of their area. The L.E.A. shall make a scheme for partitioning their area into such divisions as will be conducive to efficient and convenient administration. These schemes will be called "*Schemes of Divisional Administration.*"

These schemes will enable the L.E.A. to have due regard to the circumstances affecting different parts of their area.

The L.E.A. will also constitute bodies, called "*divisional executives,*" one for each of the areas into which the county may be partitioned by the scheme. The "scheme" should specify for which of the divisions of the county each executive will function *on behalf of the L.E.A.* It also will

specify what functions these executives are to exercise relating to primary and secondary education.

What is planned should take into account not only arrangements already existing but should take into account the variety of local circumstances, for the best unit for local administration does not necessarily conform to existing local boundaries.

The work of divisional executives will not necessarily cover the whole of the county area. Parts of a county area *may* continue to be administered by the county education committee direct, if such non-inclusion in one of the partitioned areas be more conducive to efficient administration. In fact the proviso to the second paragraph authorises the Minister to sanction the *whole functions of the L.E.A. being exercised direct by the county education committee* if a scheme of divisional administration for that particular county is considered unnecessary.

> The Hertfordshire County Council have recently accepted a report of their Education Committee that " with the exception of S.W. Hertfordshire, which presents particular problems, there are no administration and educational advantages to be gained by merging different boroughs and districts to form divisional executives.

There are a number of non-county borough councils and councils of urban districts (some of which have been L.E.A.s for elementary education only) who on account of their size may wish to be excepted from inclusion in one of the administrative divisions of the county area, in which the borough or urban district is situated.

These are provided for in the fourth paragraph of Part III of the First Schedule.

If the council of a non-county borough or of an urban district desire to be *excepted from inclusion in one of the county districts*, such councils must:

(i) **before 1st October, 1944,** lodge a claim with the Minister to be excepted from the county scheme of divisional administration; and

(ii) must prove that the population of their borough or urban district as estimated and certified by the Registrar General was not less than 60,000 on 30th June, 1939; *or* prove

(iii) that on 31st March, 1939, the total number of pupils on the rolls of the public elementary schools in their area was not less than 7,000.

In cases where the population referred to in (ii) above is satisfactorily proved, *or* the school population referred to in (iii) above is satisfactorily proved, the Minister shall direct that the borough or urban district shall become an " *excepted district,*" and consequently the council of the borough or urban district will be the divisional executive for its own area instead of forming part of one of the divisions of the county area.

The dates of population of the area, or school population as the case may be, have been selected as the nearest dates for which reliable statistics will be available for any period before the second great war.

The population of the area may be proved by presenting, with their claim for exemption, particulars of the population on the appropriate date *as estimated and certified by the Registrar General.* This is instead of producing statistics of the last census (1931) and sent on at the time on Form IX to the board. If a claim for exception be made by the council of a non-county borough or urban district which " by reason of special circumstances," cannot prove the area population or school population to be equal to the numbers given, the Minister may consider whether the

special circumstances for those particular dates are such that he should direct that borough or urban district to be excepted, and if so he may direct that it should be an " excepted district " along with those districts which do satisfy the required evidence of numbers.

A district may decide to forgo its right to be excepted in order to be combined with adjoining districts *to form a divisional executive for a larger area.*

The result of this would be :—

(1) The district would relinquish its right to draw up its own scheme of delegation in respect of primary and secondary education ;
(2) It would relinquish its right to apply for the delegation of further education functions ; and
(3) Membership of the executive would not be confined to members of the borough or urban district council.

In such a case, however, *in view of the wider interests* which might cause such forgoings of these rights, an agreement might be made between the county council (as L.E.A.) and the council of the district :—

(1) That schemes of delegation should be drawn up by these councils *in consultation* ;
(2) That provisions for delegation of any further education functions should be submitted to the Minister ; and
(3) That the council should have representation on the divisional executive appropriate to its position.

If a district does not desire to forgo its right to be excepted but makes application therefor, as soon as may be, after the Minister has directed that the district shall be so excepted from the county schemes, the council shall, *after consultation with the L.E.A. for the county* in which the district is situated, prepare a scheme of divisional administration for the district, which scheme shall be transmitted to the L.E.A. for submission to the Minister.

The L.E.A. must submit to the Minister all schemes received from excepted districts in their area with any observations they *may* wish to make thereon, but *they cannot amend or alter any scheme which the council of the excepted district has prepared.*

Paragraph 8 of Part III of the First Schedule enumerates a number of points which should be dealt with in a scheme of divisional administration.

Before incurring any expenditure the divisional executive must submit to the L.E.A. an estimate for approval, and after the expenditure has been incurred they must submit the accounts in connection therewith.

The submission of estimates of expenditure and income by a divisional executive could be provided for in the scheme of administration under paragraph 8 (*c*).

Paragraph 8 (*g*) of Part III of the First Schedule applies only in those cases where the scheme of divisional administration provides for the disbursement of monies by the divisional executive *as agents* on behalf of the L.E.A. (e.g., this might be arranged for divisional executives of excepted districts).

There is nothing in paragraph 8 to prevent a scheme of divisional administration providing that the L.E.A. themselves would disburse the money and account for it without the agency of a divisional executive.

Paragraph 12 of the Third Part of the First Schedule was included in the Bill to provide for future variations in the population of " excepted districts."

A district may be " excepted " from the county scheme if the population as certified by the Registrar General is not less than 60,000, or the elementary school population not less than 7,000.

If the population of such district should at some future time fall below 60,000 the Minister may, after consultation with the L.E.A. of the area within which the excepted district is situated, form the opinion that conditions have so altered since approval was given to it being recognised as a special district, that it should no longer be excepted and give direction accordingly.

There is no reference to variations in the school population in paragraph 12, although paragraph 4 includes this as one criterion for exception. This is due to the fact that in future there will be no public elementary schools as such : there will be primary schools for junior pupils and secondary schools for senior pupils, and statistics from these would not be easily comparable with the present 7,000 elementary school numbers.

One of the conditions for de-excepting a district will be : are the circumstances of the district *substantially* the same as they were when the district was recognised as excepted or not ?

Questions have been raised as to the position of teachers who are employed by a L.E.A. and their eligibility for membership of that authority.

Under Section 59 (1) of *the Local Government Act, 1933,* a teacher so employed is disqualified from being a member of the L.E.A. in that he holds a paid office which is in the gift or disposal of the local authority or any committee thereof.

This, however, does not prevent him from being a member of a council or L.E.A. other than the one by whom he is employed.

Where a committee of a council includes co-opted members, the proviso to Section 94 of the 1933 Act (as amended by the Eighth Schedule of this 1944 Act), authorises a teacher employed by the L.E.A. (the council) to be co-opted on an education committee *or any sub-committee* of the education committee.

As divisional executives form a newly created body questions were raised during the Committee Stage as to

(1) Whether a teacher can be a member of a divisional executive ? or

(2) Is the authority for an excepted district, to which *some* educational rights pass automatically, to be considered in fact as an education committee ?

(3) If a power to appoint teachers is delegated by a scheme of divisional administration to a divisional executive—can a teacher become a member of a county council as his office would no longer be at the gift or disposal of the county council ? and

(4) If the nominations to the district executive are from the county council or from a county district which was a former Part III authority or from one of the other county areas, is a teacher excluded from membership of all the bodies which nominate ?

The discussion on these questions brought out the facts that *teachers employed in the area of a county council are employees of the county council and may not be members of that council.* Some teachers who formerly were employed by a Part III education authority, although prohibited from membership of their own borough or urban district council, were eligible *then* for membership of the county council. When these former Part III authorities cease to function and the teachers concerned (under Section 6 (4) of this Act) become employees of the county council they will no longer

be eligible to serve as members of the county council but will now be eligible for membership of their own local borough or urban district council. If the teacher concerned should happen to be the mayor of a neighbouring borough in which he is resident, his transfer from being an employee of the former Part III authority to being an employee of the county council would not affect his position as mayor. If, however, the borough of which he is mayor should be a county borough and also a local education authority, and he should be transferred to become a teacher under *that* L.E.A., he would be unable to continue as a member of that county borough council by whom he is employed.

If a teacher should be a member of a committee of the county council (e.g., a mental deficiency committee), he would still be eligible as a co-opted member of that committee, but it would depend upon the standing orders of that council whether he could occupy the chairmanship of the committee. Many county councils have a standing order that the chairman of a committee must be a member of the county council so that he could be present to answer for that committee if its decisions were challenged at a meeting of the county council.

Any teacher, no matter by whom he is employed, is eligible for appointment to a divisional executive, either by the district council or by the county council or by any other body which under the scheme for divisional administration is given the right to nominate members to serve on the divisional executive. This follows from the fact that *a divisional executive is not a local education authority, nor is a county district council, as an excepted district, a local education authority.* A teacher, no matter whether he is employed by the authority or not, or within the area of a divisional executive or not, will be eligible for service on such a divisional executive. He will be eligible to serve as a member of a rural or urban district council.

The Parliamentary Secretary (Mr. Ede) stated that the Minister intends to take an early opportunity of consulting local education authorities about implementing the following recommendation of the McNair Report on this subject.

> "We recommend that the Board of Education should take steps to secure the relaxation of rules, prescribed or implied, which unduly limit the participation of teachers in public affairs, and to render possible the more generous staffing arrangements which such relaxation might require."

This refers to some extent to granting leave of absence for teachers to enable them to attend meetings of bodies of which they are members. This may require more generous staffing of schools.

He stated that the sense of the House was that teachers should be reasonably free to serve on any authority, except the authority which actually employs them.

The above notes refer to teachers in county schools. Section 59 (5) of the *Local Government Act, 1933*, places teachers in voluntary schools who are employed by the managers or governors of such schools in exactly the same position as to disqualification from membership of councils as teachers in county schools. See Appendix A.

As a divisional executive is not a L.E.A. nor an education committee, the *Local Authorities (Admission of the Press) Act, 1908*, does not apply to them. It may be possible for a provision with regard to the Press *to be included in the scheme of divisional administration* if this be considered desirable by them. If no such provision were made, it would be within the discretion of the divisional executives to admit the Press to some of their

meetings, but the Press would have no prescriptive right to be present. (See paragraph 23 (6) of Appendix C.)

Circular 1 of the Ministry of Education (15th August, 1944) stated :—

4. The Minister proposes in the exercise of the powers conferred on him by Sect. 108 to require those local education authorities to whom the provisions of Part III of the First Schedule will apply to proceed with the preparation of schemes of divisional administration. For this purpose he will inform authorities of those boroughs and urban districts which before 1st October next (i.e., 1st Oct., 1944) lodge with him claims to be Excepted Districts, and will consult with the authorities about the claims of those boroughs or urban districts which do not satisfy either of the conditions specified in (*a*) and (*b*) of paragraph 4 of Part III of the First Schedule.

For the assistance of L.E.A.s concerned a memorandum setting out the considerations which should be borne in mind in the preparation of schemes of divisional administration is being prepared and will be available shortly. [Ministry of Education Circular 5, dealing with schemes of Divisional Administration was issued on 15th September, 1944. See Appendix C.]

5. Authorities should notify the Minister if they desire to represent to him that, in accordance with the proviso to paragraph 2 of Part III of the First Schedule *he should by order* direct that Part III should not apply to their areas.

The Parliamentary Secretary (Mr. Ede), speaking to the Minehead Urban District Council on 14th August, 1944, said :—

" In an excepted district the county district council becomes the divisional executive."

" Outside the excepted districts the county council has to consult the county district councils with regard to the needs and circumstances of their particular area. It is not obligatory that divisional executives shall be set up for all, or any part of any county." (See paragraph 5 of Circular 1 quoted above.) " Nothing in the Act makes it necessary to set up a divisional executive for a former authority for elementary education only, except where the area qualifies by gross or school population to be an excepted district. A county council may decide, after consulting its county district councils, to establish divisional executives for some parts of its area but not for others. It may vary the extent of delegation between one divisional executive and another." . . . " Schemes may provide for the grouping of county districts so that an adequate unit may be secured. . . ."

" The divisional executive will have to draw up an annual budget. It will have power to incur expenditure included in the budget for the purposes specified in the budget when the budget has received the approval of the county council. Any dispute between a county council and a divisional executive, including a dispute about the budget may go to the Minister for settlement. If a county district council does not like the county scheme it can make representations to the Minister, who has power to amend it after consulting the local education authority."

The following extracts from a memorandum on the administration of the education service recently approved by the Kent county council is suggestive of the purposes and functions of divisional executives in any area (*see also Appendix C*).

Divisional executives are bodies midway between the county education committee and managers or governors of schools.

" The chief purposes of a divisional executive are to evoke and maintain local interest, to utilise local knowledge, and to carry out administrative arrangements in its area, following the general line of policy of the L.E.A. and within the limits of the powers which are conferred upon the divisional

executive by the authority. The most important statutory limitation of a divisional executive's powers is that it cannot be empowered to levy a rate or borrow money."

"The divisional executive, after collecting information relating to the schools in its area, will annually submit its estimate of expenditure to the authority for approval. Except for matters which the authority should reserve for its own attention, the divisional executive will be responsible for the administration, within the approved estimates, of the primary and secondary schools in its area." . . . "Undoubtedly it would be an advantage for divisional executives to be given certain responsibilities for county colleges."

"The divisional executive will be the body primarily responsible for the physical amenities and general arrangements, under which education is carried on in its area. This responsibility will include the preparation of proposals for new accommodation, for the maintenance of existing accommodation and for care-taking arrangements."

"The divisional executive will also have a general supervision of the arrangements for the appointment of teaching and other staff. Certain functions in relation to the appointment of staff will be performed by managers and governing bodies. Other matters, including conditions of engagement and general staffing arrangements, the number and qualifications of the staff of each school, the selection of certain head teachers and regional principals, schemes of organisation and proposals for important new developments, will have to be dealt with, wholly or partly, by the authority, but there should be consultation with the divisional executive or executives concerned. Members of the staff will have a right of access to the employing authority, normally through the governing body or divisional executive."

"The divisional executive will require the services of a local administrative staff, which will be under its supervision. As with teaching staff, so the administrative staff will form one service throughout the county, and officers will be transferable from one place to another, but the divisional executive will have the right to be concerned with the appointment of the divisional education officer or any proposal for his transfer to another part of the authority's services."

"Finally divisional executives will be responsible for the welfare of children in their areas. It is evident from the Act that the Government intend that local education authorities should devote more and more attention to the very important matters which come under the heading of 'welfare of children and young people' and in dealing with such things as school attendance, boarding out, clothing, medical inspection, etc., the divisional executive's knowledge of local conditions will be particularly valuable."

"The terms and conditions of appointment of divisional education officers must be decided by the authority, and appointments of divisional education officers and of other staff of the divisional executive offices will be appointments to the authority's staff.

"The authority and the divisional executive will need to collaborate in the selection of a divisional education officer and in deciding the office accommodation to be provided."

See also the Notes on Section 79 for a reference in the White Paper as to some duties connected with the Ministry of Health which may be delegated to some of the existing district authorities in the counties.

FIRST SCHEDULE

The following statistics were presented to Parliament in response to Questions :—

Table I deals with the smaller counties and county boroughs, which *might* be under consideration when "Joint Education Boards" are being formed under Part I of the First Schedule.

TABLE I

County and County Borough Local Education Authorities with a population at the 1931 Census of less than 70,000

ENGLAND

Counties	Population, 1931 Census	Public Elementary School Population, 31st March, 1939
Isles of Scilly	1,740	185
Huntingdonshire	56,206	6,928
Soke of Peterborough ...	8,288	1,025
Rutland	17,401	2,146
Westmorland	49,831	5,285
County Boroughs		
Barrow	66,202	8,480
Bath	68,815	6,953
Burton-upon-Trent	49,486	6,700
Bury	56,182	6,208
Canterbury	24,446	2,681
Carlisle	57,304	8,242
Chester	41,440	5,912
Dewsbury	54,302	6,567
Doncaster	63,316	9,936
Dudley	59,583	9,172
Eastbourne	57,435	4,763
Exeter	66,029	7,195
Gloucester	52,937	7,668
Great Yarmouth	56,771	6,737
Hastings	65,207	6,131
Lincoln	66,243	7,146
Rotherham	69,691	10,958
Tynemouth	64,922	9,356
Wakefield	59,122	7,350
West Hartlepool	68,135	10,441
Worcester	50,546	6,413

WALES

Counties		
Anglesey	49,029	6,168
Breconshire	57,775	7,034
Cardiganshire	55,184	5,657
Merionethshire	43,201	5,015
Montgomeryshire	48,473	5,778
Radnorshire	21,323	2,410

Table II deals with boroughs and urban districts which *might* claim to be " excepted districts," under Part III of the First Schedule.

TABLE II

Administrative County	Name and Status (i.e., M.B. or U.D.) of possible Excepted District	Population, Census 1931	P.E.S. 31st March, 1939
Bedfordshire ...	Luton M.B.	70,486	10,240
Cambridgeshire ...	Cambridge M.B. ...	70,169	7,076
Derbyshire ...	Chesterfield M.B. ...	64,160	9,240
Dorset	Poole M.B.	60,196	7,560
Durham	*Stanley U.D.	55,287	7,605
	Stockton-on-Tees M.B.	67,722	10,521
Essex	Barking M.B.	51,270	13,607
	*Dagenham M.B. ...	89,362	22,771
	*Hornchurch U.D. ...	39,389	11,337
	Ilford M.B.	131,061	18,831
	Leyton M.B.	128,313	12,030
	*Romford M.B.	37,840	7,508
	*Thurrock U.D.	61,898	10,331
	Walthamstow M.B. ...	132,972	15,369
Hertfordshire ...	†Watford M.B.	58,533	7,339
Kent	*Bexley M.B.	32,652	9,953
	*Chislehurst and Sidcup U.D.	27,156	9,438
	Gillingham M.B. ...	61,651	7,966
Lancashire ...	Widnes M.B.	40,619	7,107
Middlesex ...	Acton M.B.	70,008	6,480
	Brentford and Chiswick M.B.	63,217	5,489
	Ealing M.B.	116,771	18,365
	Edmonton M.B. ...	77,658	14,065
	Enfield U.D.	67,752	11,800
	*Harrow U.D.	96,656	19,561
	Hendon M.B.	115,640	14,331
	Heston and Isleworth M.B.	76,254	11,811
	Hornsey M.B.	95,416	6,854
	Tottenham M.B. ...	157,667	17,481
	†Twickenham M.B. ...	79,299	9,362
	*Wembley M.B.	65,799	11,031
	Willesden M.B.... ...	185,025	18,537
Staffordshire ...	Newcastle - under - Lyne M.B.	54,739	8,141
Surrey	*Carshalton U.D. ...	28,586	9,396
	*Merton and Morden U.D.	41,227	9,258
	*Mitcham M.B.	56,872	8,347
Wiltshire	Swindon M.B.	62,414	8,043
Worcestershire ...	Oldbury M.B.	36,642	7,147
WALES			
Glamorgan ...	Rhondda U.D. ...	141,346	19,231

* Councils which have never exercised powers with respect to elementary education.

† Councils which have relinquished their powers with respect to elementary education.

N.B. During the Committee Stage it was agreed that the population on 30th June, 1939, *as estimated and certified by the Registrar General,* should be substituted for the 1931 Census population.

With regard to " excepted districts " on 5th April, 1944, the Parliamentary Secretary to the Board of Education (Mr. Ede) explained that one of " the criteria to be applied when considering claims from districts which did not quite reach the standard population would be the ability of the district to have a reasonably self-contained education service for both primary or secondary education." E.g., a particular county district may have a substantial population, with secondary schools supplying the needs of pupils coming in from surrounding villages.

It might then be desirable if the central borough or urban district were 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.

SECOND SCHEDULE

[Section 13]

Transfer to a Local Education Authority of an Interest in the Premises of a Voluntary School

1. A local education authority and the managers or governors of any voluntary school maintained by the authority may, subject to and in accordance with the provisions of this Schedule, make an agreement for the transfer to the authority of any interest in the school premises held by any persons for the purposes of any trust deed 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 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 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 " includes a teacher's dwelling-house.

Under Section 13 (1) (*b*) there may be an application from the managers or governors of a voluntary school for their school to be maintained as a county school. This Schedule deals with the making of an agreement for the transfer to the L.E.A. of any *necessary* interest in the premises. Paragraph (3) (*b*).

Under paragraph (3) (*a*) if an incumbent has only just been appointed he must be asked if he is prepared to consent to a change in his right (if any) of user of the school. If the agreement be made during a vacancy in the living, the sequestrators (with the approval of the Bishop) might consent.

Section 23 of the *Education Act, 1870*, made provision for the transfer of a voluntary school to a School Board, at the same time safeguarding the interests of persons who, according to the trust deed connected with the school (if any) or otherwise, had any interest therein.

This Second Schedule continues similar arrangements for transfer to a county school, subject to any changes this 1944 Act has made necessary. But it contains no reference to a re-transfer as did Section 24 of the 1870 Act. A special agreement school may be changed to be an aided school, when the managers, under paragraph 9 of the Third Schedule to this Act, repay to the L.E.A. the amount of grant they received under the agreement.

In 1871 the Education Department issued the following rules with reference to the transfers of voluntary schools in the district of a School Board to that School Board :—

I. In the case of premises held under a trust, express or implied, the following rules shall be observed :—

(1) All questions relating to the title of the parties to the proposed arrangement, or affecting the subject matter upon which it is to operate, must be considered and settled by the legal advisers of the parties, and will not be investigated by the Education Department.

(2) In considering whether any proposed arrangement should be approved, the Department will confine their attention to ascertaining that the terms of the arrangement are, in their opinion, proper and reasonable, and the approval expressed in any case will be limited accordingly.

(3) As to the terms of the arrangement—no payment of rent beyond that charged upon or reserved out of the premises by the original lease, and no other valuable consideration, except an undertaking to insure and keep the premises in repair, and to keep down or redeem charges or incumbrances on the same will in general be sanctioned.

II. Arrangements with respect to schools which are private property must be settled by the proprietors of the premises and the school boards, and do not require the intervention of the Department.

Under paragraph 6 of this Second Schedule to the 1944 Act, when the Minister has approved the agreement, the managers or governors may convey any *necessary* interest to the L.E.A., *although the interest so transferred is not vested in these managers or governors.*

This, however, does not savour of expropriation. It enables the managers or governors *to transfer a legal interest.* This would in some cases be vested in a body of trustees, possibly the official trustee or a trustee of Charity Lands. In that case the managers or governors would follow the usual procedure.

This is not a new feature, it follows on Section 23 of the 1870 Act.

The definition of " premises " in clause 8 of this Second Schedule differs from the definition in Section 114.

THIRD SCHEDULE

[Section 15]

Special Agreements in Respect of Certain Voluntary Schools

1. Where proposals for the establishment of a school or for the alteration of the premises of a school have been submitted to a former authority, within the time limited by subsection (2) of section eight of the Education Act, 1936, 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, a local education authority 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 contained or proposed to be contained in the development plan 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, or by reason of war damage, it is desirable that the proposals should be revised, the Minister may give directions 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 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 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.

The *Education Act, 1936*, was passed " to enable L.E.A.s to make grants to non-provided schools in certain cases and to amend the law in relation to schools receiving such grants."

Under Section 29 (2) (*d*) of the 1921 Act it was the *duty* of the managers of a non-provided school *to provide the school house free of charge*. The 1936 Act gave the L.E.A. the *power* (not the *duty*) to aid in the provision of accommodation for *senior* pupils in voluntary schools, and thus to facilitate the reorganisation of schools in their area.

Proposals were to be submitted to the L.E.A. on or before 28th February, 1938, with a discretionary power in special cases for the L.E.A. to accept a particular proposal up to 31st August, 1938.

The second great war prevented some of these proposals being carried out and this Third Schedule enables such proposals, or a revision of such

proposals, to be received provided they would facilitate the execution of provisions relating to school accommodation for senior pupils contained, or proposed to be contained, in the "development plan" for the area.

The purpose of the time limit in paragraph 3 (six months) is to ensure that there shall be no undue delay in the work of reorganisation and reconstruction. Since orders would not be made until 18 months after 1st April, 1945, the six months' limit from that date gives two years which in most cases would be ample for the preparation of agreements: especially as most of the agreements were put forward by 1st March, 1938, or 1st September, 1938, at the latest.

Part II of the 1944 Act comes into operation on 1st April, 1945, and within a year of that date the L.E.A. must prepare and submit a development plan for their area (Section 11). Under paragraph 3 of this Schedule, no agreement is to be made after the expiration of *six months* (or such extended period as the Minister may allow) *from the date when the development plan of the L.E.A. comes into force in their area.*

(For particulars of these special agreements see *The Education Act, 1936*, by Ikin and Sparke.)

Under the 1936 Act, the L.E.A. was empowered to make grants to voluntary school managers not below 50 per cent nor above 75 per cent of the cost of providing accommodation for senior pupils.

In some cases in the agreements made under Section 8 of the 1936 Act, the grant was to be a percentage of the *estimated* cost. Where this was exceeded, and there was no provision for such, the L.E.A. could refuse to pay any part of this excess.

Paragraph 5 of this Third Schedule states that the grant will be based on the actual cost of executing the proposals, and not on the *estimated* cost, which may vary in one way or another from the *actual cost.*

The 1936 Act was supplemented by the *Senior Public Elementary Schools (Liverpool) Act, 1939*, which authorised the L.E.A. for Liverpool to *construct schools* for senior pupils, *and to lease them to voluntary school managers*, at an annual rental not less than 1 per cent nor more than 2 per cent of the cost incurred by the authority in providing such premises.

Schools already provided under the special agreements authorised by the 1936 Act or under the Liverpool Act, or to be provided within the period for such agreements as extended by this Act, will be styled "Special Agreement" schools.

In deciding whether to renew proposals which were made before 28th February, 1938, but not yet carried out, the managers, on their part, may consider whether it would be more in consonance with their religious principles, *not* to renew their proposals, but to accept 50 per cent of the cost of bringing their schools up to the standards prescribed under the Regulation made by the Minister under Section 10, and thus enable their school to become an "aided school" with undiminished control of the religious instruction therein, and of the appointment of teachers; or whether it would be satisfactory if they renew their proposals and receive 50 to 75 per cent of the cost, but have considerable restriction regarding the appointment of their teachers, and possibly restrictions in connection with the religious instruction given through having only a number of "reserved teachers" therein.

The L.E.A. on their part may consider whether it will be more advantageous to agree to make a grant of 50 to 75 per cent of the cost, and secure a certain amount of control of the appointment of the teaching staff, or

whether to decline to enter into an agreement, with the loss of control of the appointment of teachers in the particular school which the agreement would have secured.

7. Any agreement made under this Schedule 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 such number of reserved teachers 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 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.

Paragraph 7 of this Schedule states that the number of *reserved* teachers in such a " local agreement " school will be in accordance with the agreement made. (It was reported that in some Roman Catholic schools the L.E.A. agreed to 100 per cent of reserved teachers being appointed.)

Section 27 (2) of this Act states that the number of *reserved* teachers in a " controlled " school must not exceed one-fifth of the total number of the teaching staff (including the head teacher in that number for calculation purposes only).

Paragraph 10 of this Schedule states that until the proposals under the agreement have been carried out, the apportionment of repairs specified in Section 15 (3) above will not be applicable to that particular school. Any apportionment of the cost of repairs during the interval between the making of the proposals and their being carried out " shall be such as may be determined by agreement " between the L.E.A. and the managers or governors. If these parties do not agree on their apportionment, the Minister will decide on such apportionment.

FOURTH SCHEDULE

[Section 21]

Meetings and Proceedings of Managers and Governors

1. The quorum of the managers or governors 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 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 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.

Occasionally questions have arisen as to the appointment of the " *chairman* " of the governors of a secondary school where the body of governors

was appointed by a higher education sub-committee: as to whether the governors must make this appointment, or whether the higher education sub-committee had the power to make this appointment: and further, for what period the chairman was to be appointed.

There is no reference to this in this Fourth Schedule.

Clause 2 of the Third Schedule to the *Education Act, 1870*, stated with reference to a School Board: "The Board shall *at their first meeting*, and afterwards, from time to time, at their first meeting after each triennial election, appoint some person to be chairman *for the three years* for which the Board hold office."

The same Schedule further stated with regard to managers of a board school: "The managers may elect a chairman of their meetings. If no such chairman is elected, the members present shall choose one of their number to be *chairman of that meeting.*"

The Poor Law Commissioners on 24th July, 1847, by Article 29 of their consolidated order, stated:—

The Guardians shall, at the first meeting after 15th April, elect out of the whole number of guardians, a chairman, who, provided he is a guardian, shall continue to act as chairman for *the year next ensuing.*

Similarly, the Schedule to the Act of 1864 relating to the proceedings of a Highway Board, stated: The Board shall at the first meeting, and afterwards, from time to time, at their first meeting after *each annual appointment* of members of the Board, appoint one of their members to be chairman, for the year following such choice.

From a consideration of the above analogous cases, it would appear to be the prerogative of each body of governors to elect their own chairman, and that the election should be for the period of their existence. If the body of governors be elected for a year, then the period of office of the chairman should not exceed a year and would terminate when the body of governors ceased to exist as such.

The above question will not apply where, as in the case of some voluntary schools, there is an *ex-officio* chairman.

Paragraph 4 of this Schedule states that "the managers or governors shall hold a meeting at least once in three months."

This reproduces paragraph 5 of the Third Schedule to *The Education Act, 1921.*

The question has been put to me by several chief educational officers: If it is reported to the L.E.A. that a body of managers of a voluntary school do not meet as prescribed, how can they be compelled to meet?

There is no "sanction" given here.

(See also Note on the signing of the minutes of an education committee following Part II of the First Schedule.)

In order to give some security of tenure for teachers in secondary schools it has been customary for the dismissal of a head teacher to be considered at two successive meetings of the governors with a reasonable interval between the meetings.

It would be advisable to have a clause in the Articles of Government that a *dismissal* of a head teacher must be considered at *two* meetings of the governing body, and that at each of these meetings paragraph 3 of the Fourth Schedule will apply.

The suggestion in Paragraph 16 (*b*) (ii) of the Ministry's suggestions (see Appendix B) of a *two-thirds majority* is not possible in view of Paragraph 3 of the Fourth Schedule above.

FIFTH SCHEDULE

[Section 29]

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, the authority shall 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 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 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 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 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 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 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, 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.

The Fifth Schedule deals with the procedure of formulating and bringing into operation an agreed syllabus of religious instruction but does not in any way deal with the *contents* of such syllabuses as may be drawn up in accordance with the procedure outlined.

Section 114 (1) of this Act defines the term " agreed syllabus " which is used in various sections of the Act, as—

" 'Agreed syllabus' means, subject to the provisions of Subsection (4) of this section, an agreed syllabus of religious instruction prepared in accordance with the provisions of the Fifth Schedule to this Act and adopted or deemed to be adopted thereunder."

The use of an agreed syllabus is to serve as a *guide* to teachers for the selection of lessons to be given, and *not as a rigid curriculum* to be followed by the teachers.

The syllabus adopted by the L.E.A. for any area will serve as a scheme of suggested lessons, some of which may be used in their schools.

Teachers should make up their own syllabus of work, *based on an agreed syllabus*, and write up their own notes of lessons thereon. As mentioned, *an agreed syllabus should be used as a guide only* for the selection of lessons therefrom.

Provided they choose subjects for lessons from the syllabus agreed upon as the basis of the religious instruction for schools in their area (and do not choose lessons outside that syllabus) each teacher will teach most effectively from his, or her, own scheme of work and will give better lessons from their own notes therefor, than from notes of lessons drawn up by someone else.

Information and suggestions for assistance in preparation for their notes may be found in Nelson's *Agreed Syllabus Series of Books on Religious Instruction*, which will prove useful for teachers, and avoid the necessity of their consultation of numerous reference books.

It is not suggested by the issue of a printed agreed syllabus that each teacher in every school should teach *all* the lessons included in the syllabus adopted for their area but rather that teachers should select those which appear to them to be the most suitable for the type of children in their own particular classes.

If a number of the Agreed Syllabuses at present in existence are compared it will be seen that many subjects are common to them, which is what might be expected, as they all deal with the main points of the Christian religion, and Nelson's *Agreed Syllabus Series of Books* already mentioned, will provide much and widely varied information for teachers' use, *whatever syllabus may have been agreed upon for their area.*

Book III of the series was *specially written for teachers* of pupils over 11 years of age and is very comprehensive in its scope. It includes historical, archaeological and psychological material, in addition to being a commentary on subjects selected from various parts of the Bible (including the Apocrypha) with a brief sketch of the development of Christianity since the days of the Apostles.

One advantage of an agreed syllabus is that it will assist in obtaining *a certain amount of uniformity in the area*, so that a child moving from one school to another can take on the work of the new school better through the similarity of aim, although the details of the work, or the particular lessons given, may not be precisely the same.

Twenty-five years ago (in 1919) I arranged for a committee consisting of representatives of the Church of England, the Free Churches, the National Union of Teachers, and of the L.E.A., to consider a course of Religious Instruction which would be acceptable to all parties especially for pupils from C. of E. junior schools (up to 11+) who would be transferred to senior council schools. (The scheme of reorganisation in Blackpool was approved in 1920.)

The L.E.A. issued as *Suggestions for the giving of Religious Instruction in Council Schools* the report of this joint committee. Teachers were to draw up their own syllabuses, based on these suggestions, just as they based their secular instruction on the Board of Education *Suggestions for Teachers*.

The Board of Education has substituted their "Suggestions" for the rigid syllabuses formerly included in the "Code" which showed the *standard* of work children were to reach in their various classes (hence classes were called "standards." A class which was supposed to reach the third standard of work prescribed by the code was called the Third Standard.

Five years later the *Cambridge Agreed Syllabus* (1924) was published as the result of the work of a similar representative committee, as a more definite guide to teachers than suggestions only. Other agreed syllabuses drawn up in other areas followed later.

Some years ago I had an interesting talk with the late Cardinal Bourne on the religious instruction to be given in reorganised schools to which pupils from various denominations might be transferred at 11+.

The Cardinal was not in favour of pupils being transferred from Roman Catholic schools to council senior schools. Such "agreed syllabuses as he had seen, he said, would not meet the needs of *their* pupils; these syllabuses, he said, do not provide what is deemed by them to be the most important part of religious education from *their* point of view.

Apparently the Church of Rome is of opinion that a day-by-day training in religious *practices*, in preparation for worship in a Roman Catholic church, is what matters most in their schools, and that (according to Pope Pius IX) "a simple affectionate faith is more to the point than completeness of intellectual appreciation of the text of the Bible."

The Report of the "Consultative Committee" (commonly known as the Spens Report) stated:—

No boy or girl can be counted as properly educated unless he or she has been made aware of the fact of the existence of a religious interpretation of life. The traditional form which that interpretation has taken in this country is Christian, and the principal justification for giving space in the curriculum to the study of the Scripture is that *the Bible is the classic book of Christianity* and forms the basis of the structure of Christian faith and worship.

One speaker in the House of Commons said, during the debate on the Second Reading of the Education Bill:—

They should accept the agreed syllabuses as dealing with *the fundamental principles of our Christian religion*, on which denominationalists can afterwards in the Sunday schools, and for two periods a week in "controlled schools" build the necessary superstructure. (N.B.—This statement may be compared with the Roman Catholic point of view above.)

In 1888 the Board of Education stated that the Lord's Prayer, the Ten Commandments and the Apostles' Creed were not "formulae distinctive of any particular denomination."

Circular 1 of the Ministry of Education (15th August, 1944) states :—

"7. In order to comply with the provisions of the Act, it will be necessary for every local education authority to have adopted an agreed syllabus of religious instruction not later than 1st April, 1945. Section 114 (4) meets the immediate needs of authorities which have already adopted a syllabus of religious instruction, and in their case the convening of a conference in accordance with the provisions of the Fifth Schedule is not therefore a matter of urgency. Authorities, however, which have not adopted such a syllabus will need to cause a conference to be convened at an early date. It is unlikely that the framing of a completely new syllabus could be completed by 1st April next, but it is open to the conference to recommend the adoption of an existing syllabus, whether provisionally or otherwise.

In accordance with this Fifth Schedule the L.E.A. must convene a conference to prepare a syllabus of religious instruction. The constituent members of the conference shall be persons representing the chief religious denominations of an area with representative teachers and the local education authority.

An agreed syllabus under the Education Act, 1921, was an informally agreed syllabus, agreed by conference. An "agreed syllabus" under this Act will be a syllabus that is agreed under a procedure laid down by an Act of Parliament.

Under paragraph 2 of the Fifth Schedule there will be four groups taking part in the conference :—

(*a*) Representatives of such denominations as the L.E.A. consider should be represented ;

(*b*) Representatives of the Church of England (except in Wales where the Church of England was disestablished (in 1920) by the 1914 Act) ;

(*c*) Representatives from such associations of teachers as the L.E.A. consider should be represented (not necessarily from one association only) ; and

(*d*) Representatives of the L.E.A.

The object of having four bodies (or committees) is to ensure that all parties interested may have proper representation at the conference. It is not essential that the groups should be the same size as each other, for in the voting at the conference each group will have only one vote when arriving at any decision. Although any one of these bodies may meet separately to discuss some detailed point, it is not the intention to create four bodies each of which should draw up its own syllabus, and bring it to the conference, but to provide a real united conference in which a syllabus will be created and forged by the goodwill and joint efforts of all concerned.

The Local Education Authority may adopt any syllabus (or syllabuses) *unanimously* recommended by the conference for their area or for any particular class or group in the area.

The word "*unanimously*" means that *each of the groups must be in favour of it*, and not necessarily every individual member of each group taking part in the conference.

An "agreed" syllabus is therefore one which is "agreed" by the votes

of the four bodies forming the conference: i.e., there must be the full four votes given in its favour.

In this way an endeavour is made to ensure that there shall be teaching of religion, but *what* is taught is referred to a consensus of opinion between local authorities, the teachers, the denominations and everybody concerned, as shown in conference.

Under paragraph 10 of this Schedule, if the conference formed by the L.E.A. are unable to reach unanimous agreement, or if the L.E.A. fail to adopt a syllabus of religious instruction unanimously recommended by the conference, the Minister will arrange for a conference appointed by himself. This Minister's conference will consist of

(*a*) Persons having experience in religious instruction; and

(*b*) shall be of like representative character as required by paragraph 2 above.

A copy of the syllabus which this Minister-appointed conference agree upon will then be deemed to be the agreed syllabus, for the schools or the class or description of pupils for which it was prepared.

Paragraph 12 provides for a future reconsideration, revision or amendment of the agreed syllabus, whenever time and experience indicate a probable need for such: in this case the procedure of the earlier part of the Fifth Schedule will be repeated.

The conference is not restricted to making only one syllabus of religious instruction for recommendation to a L.E.A. for adoption.

The opening words of paragraph 1 of the Fifth Schedule refer to the "preparing *any syllabus* of religious instruction." not "*a*" syllabus. (See also paragraph 6.)

Paragraph 9 also refers to a syllabus for a "class or description of pupils."

Where a large Jewish population is resident there may be a syllabus for their religious instruction prepared, in addition to the ordinary syllabus of Christian instruction.

In 1938 it was estimated that there were 234,000 Jews in London, and 30,000 in Manchester and neighbourhood. (*Whitaker's Almanack, 1943.*)

SIXTH SCHEDULE

[Section 72]

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 has 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 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 President of the Council, as the case may be.

4. Where any appeal 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.

During the Committee Stage in the House of Lords the Lord Chancellor, in speaking against an amendment to substitute the word " panels " for the word " committees " in the Fifth Schedule, stated :—

" A panel is a list of people out of which you may draw one or more to serve some purpose or other. The jury panel, for example, is a list of people qualified to act as members of a jury, but they do not in fact *all* sit in the jury box. *That illustrates the proper use of the word panel.*"

In the Sixth Schedule the word " panel " is correctly used. It would be unfortunate if one should turn over the page to the Seventh Schedule [now the Fifth Schedule] and find again the word " panel," but this time meaning a whole body of persons, and not simply a source, a well, out of which individuals might be drawn.

Undoubtedly that is the meaning of " panel " in England. In Scotland, of course, this Bill does not apply, but it happens that in Scotland " panel " means " prisoner at the bar " which is still more unfortunate.

SEVENTH SCHEDULE

[Section 110]

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 " 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 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.

Evacuation, bombing, devastation, and the influx of population has so altered the whole situation in the country that the rates and grants for the present year would not be equitable to take as a " standard year " for educational expenditure and grants. So the year ending 31st March, 1939, the last complete year before war was declared, is taken as the " standard year " for all calculations under this Schedule.

The term " elementary education authority " refers to local authorities which had power to levy a rate for elementary education during the standard year, including county councils and the councils of Part III authorities, but does not refer *here* to county boroughs.

Section 110 above only refers to transfers to county councils of functions formerly exercised by county districts.

The term " Standard *rateborne* expenditure " refers to that amount of expenditure for elementary education which the L.E.A. for the area had to provide from the rates during the standard year after the grant from the Board of Education had been taken into account.

In one county area the expenditure on elementary education during the standard year was £757,498, and the grant reserved for elementary education in that year was £344,651. The difference between these amounts, £412,847, had to be provided from the rates and was the " standard rateborne expenditure " for that county L.E.A.

In the area of one Part III authority in that same county expenditure in that year on elementary education was £84,975 and the grant from the Board of Education was £44,311. The difference between these amounts, £40,664, had to be found from the rates of that area and is taken as the " standard rateborne expenditure " for that L.E.A.

2. The Minister shall ascertain the amount of the standard rateborne expenditure of each elementary education authority in the county, and the amount in the pound of the rate which would have been necessary to raise that amount.

This does not mean the rate actually raised in the standard year. This may differ from the *rateborne* expenditure because the actual rate levied is generally based on the *estimated* expenditure during the year, and in some cases this may have been lower, owing to a balance in hand from the previous year.

The following give the amounts of rateborne expenditure for one county area and six boroughs which under this Act will become incorporated with that county area :—

Area	Elementary Education Expenditure	Grant	Rateborne Expenditure
	£	£	£
County Area ...	757,498	344,651	412,847
Borough A ...	52,626	28,253	24,373
„ B ...	84,975	44,311	40,664
„ C ...	46,429	24,837	21,592
„ D ...	32,552	17,938	14,614
„ E ...	37,530	19,106	18,424
„ F ...	25,832	13,620	12,212

The *actual rate poundage* necessary to raise the rateborne expenditure for each area separately (as given in the above table) is shown in the table below :—

Area	Assessable Value in 1938–39	Rateborne Expenditure (as above)	*Actual Rate Poundage* required to raise that amount in each area
	£	£	d.
County Area ...	3,831,175	412,847	25·862
Borough A ...	187,564	24,373	31·186
„ B ...	231,470	40,664	42·162
„ C ...	158,191	21,592	25·172
„ D ...	71,693	14,614	48·921
„ E ...	114,844	18,424	38·501
„ F ...	66,602	12,212	44·005
Totals ...	£4,661,539	£544,726	

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 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.

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.

If the total assessable value of the county area, with its six boroughs given above, was £4,661,539, and the total rateborne expenditure was £544,726, the amount in the £ which would have been required by precept of the county council to be raised by the rating authorities would have been 28·045d., i.e., this would have been the poundage calculated on the *notion, or ideas, that this charge was uniform throughout the county and the six contained boroughs*: this is here called the *notional rate poundage*. This distinguishes it from the rate poundage which would have been actually required as in the table above, where each area is debited with its own rateborne expenditure.

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.

The differences between what is called the "*actual* rate poundage" under paragraph 2 above and the "*notional* rate poundage" under paragraphs 3 and 4 above are as follows:—

Borough A, 3·141d.; B, 14·117d.; C, 2·873d.; D, 20·876d.; E, 20·456d.; and Borough F, 15·960d.

These are rate *advantages* for each of the six boroughs, that is the drop from their former rate (as calculated here) to the lower rate of the county would be an advantage of the amount here given.

PART II

1. If the rate disadvantage of any elementary education authority in the county is more than sixpence, but not otherwise, the Minister may, after consultation with the county council, make an order for the county under this Part of this Schedule.

In boroughs A and C the rate advantage is less than sixpence and these two boroughs should be able to get this advantage in the first year of the operation of this arrangement, i.e., of being charged only the county rate. The other four boroughs will get their advantages gradually, in accordance with an order made by the Minister.

If these boroughs had had rate *disadvantages* instead of advantages, the procedure would have been similar, the *stepping-up* of their rate to the larger county rate (if a disadvantage of over sixpence) gradually.

2. Any such order shall come into operation on the date of the com-

mencement of Part II of this Act 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.

Assuming that the greatest rate disadvantage in the county was 23·250d., the number of years during which the gradual reduction of their own rate to the county education rate is found by dividing this figure by six (i.e., the maximum number of years allowed ÷ 1). This division by six gives a quotient of three and a fraction which is less than four, and as, in this particular calculation, fractions are disregarded, the reduction will be spread over three years.

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, 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 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.

In the case of the county above mentioned, the denominator will be 4, and the fractions will be ¼, ½, ¾, i.e., the rate advantage will accrue in quarters: one quarter each year. In the fourth year these boroughs

will all have precepts at the same rate as the county in which they are situated.

[For a period of five years the fractions would be $\frac{5}{6}$, $\frac{4}{6}$, $\frac{3}{6}$, $\frac{2}{6}$, $\frac{1}{6}$, and the advantages would be obtained at the rate of $\frac{1}{5}$ thereof for each of five years.]

In the case of borough B above, the precept issued by the county council would be on these figures (the amount of the county rate + $\frac{4}{5}$ of 14·117d.) for the first year; (the county rate + $\frac{3}{5}$ of 14·117d.) for the second year; (the county rate + $\frac{2}{5}$ of 14·117d.) for the third year; and the county rate for the fourth year. If instead of rate advantage these boroughs had rate disadvantages the rates would have been stepped *up* to a higher county rate one quarter each year. First year (county rate + $\frac{1}{4}$ of disadvantage); second year (county rate + $\frac{2}{4}$ of disadvantage); third year, (county rate + $\frac{3}{4}$ of disadvantage); fourth year—full county rate.

It is not clear from this Schedule whether expenditure on, and grants for, medical inspection and treatment with expenditure on the provision of meals, will be deducted from the above amounts before making the calculation or not, but—

Clause (*e*) of paragraph 7 of Circular 1 (15th August, 1944) states:—

"A statement will be sent as soon as possible for the information of each county authority and each existing authority for elementary education only within the county, giving in respect of each such area (including the county area) the amount ascertained for the purposes of Part I of the Seventh Schedule."

Any authority desiring to apply for an Order under Section 110 should do so *not later than* 31*st October, 1944.*

EIGHTH SCHEDULE

[Section 120]

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.

Enactment to be amended.	Amendment.
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 :

Enactment to be amended.	Amendment.
The Children and Young Persons Act, 1933.—*cont.*	
Section ten.—*cont.*	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 (i) 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 substituted the words "before they attain the age at which employment ceases to be prohibited under paragraph (*a*) of the last foregoing subsection."
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

Enactment to be amended.	Amendment.
The Children and Young Persons Act, 1933.—*cont.*	
Section twenty-two—*cont.*.	
	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.

Enactment to be amended.	Amendment.
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,

Enactment to be amended.	Amendment.
The Unemployment Insurance Act, 1935.—*cont.*	
Section seventy-eight—*cont.*	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"

Enactment to be Amended.	Amendment.
The Unemployment Insurance Act, 1935.—*cont.*—	
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."

NINTH SCHEDULE

[Section 121]

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 Deficiency 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	The Employment of Women, 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.

Session and Chapter.	Short Title.	Extent of Repeal.
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 THIS 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.

APPENDICES

A. RELEVANT SECTIONS OF OTHER ENACTMENTS:

See Preface and List of Contents.

B. PRINCIPLES OF GOVERNMENT IN MAINTAINED SECONDARY SCHOOLS:

See Preface and Section 17.

C. SCHEMES OF DIVISIONAL ADMINISTRATION:

See Part III of the First Schedule.

D. TRAINING OF TEACHERS A HUNDRED YEARS AGO:

See Section 62.

E. SOME NOTES ON EDUCATIONAL ADVANCES:

See Preface.

F. LIST OF ORDERS AND CIRCULARS ISSUED BY THE MINISTRY

APPENDIX A

RELEVANT SECTIONS OF OTHER ENACTMENTS

School Sites Act, 1841. [See Section 86 (2)]

An Act to afford further facilities for the conveyance and endowment of sites for schools.

Section 2. And be it enacted, that any person being seized in fee simple fee tail or for life, of and in any manor or lands of freehold, copyhold, or customary tehure, and having the beneficial interest therein, may grant, convey, or enfranchise by way of gift, sale or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, *as a site for a school* for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purpose of the education of such poor persons in religious and useful knowledge : . . .

Provided that upon the said land so granted as aforesaid or any part thereof *ceasing to be used for the purposes in this Act, the same shall thereupon immediately revert to and become a portion of the said estate* held in fee simple or otherwise, or of any manor or land as aforesaid, as fully to all intents and purposes as if this Act had not been passed, anything herein to the contrary notwithstanding.

Section 6. And be it enacted, that it shall be lawful *for any corporation*, ecclesiastical *or lay*, whether sole or aggregate, and for any officers, justices of the peace, trustees or commissioners, *holding land for public*, ecclesiastical, parochial, charitable, *or other purposes or objects*, to grant, convey or enfranchise, for the purposes of this Act, such quantity of land as aforesaid *in any manner vested in such corporation*, officers, justices, trustees or commissioners ; . . . Provided also that the justices of the peace may give their consent to the making of any grant of land or premises belonging to any county, riding or division by vote at their general quarter sessions.

N.B.—Under Sect. 6 it would appear that the corporation of a borough being a lay corporation, if they act as a corporation (and not as a L.E.A.) may grant from land held for public purposes a site for a voluntary school, and when the school has been built, it could be maintained by the corporation acting as the L.E.A.

The Justices of the Peace do not appear to have the power to grant county sites as lands and premises in the county are not vested in them now but in the county council.

Endowed Schools Act, 1869.

(Section 86.)

Section 5. *Definition of "educational endowment."*

The term "*educational endowment*" 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, or of exhibitions tenable at a school or a university or elsewhere, whether the same 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.

Section 29. Apprenticeship fees.

For the purposes of this Act endowments attached to any school for the payment of apprenticeship fees or for the advancement in life or for the maintenance or clothing or otherwise for the benefit of children educated at such school shall be deemed to be educational endowments.

Section 34. Objections and suggestions respecting scheme.

During [*three*] months after the first publication of the draft of a scheme the commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall receive any alternative scheme submitted to them by the governing body of any endowment to which the scheme of the commissioners relates.

Section 35. Power to make inquiry into schemes.

At any time after the expiration of the [*three*] months, the commissioners, or any one of them, if they think fit, may hold an inquiry or they may refer the draft of the scheme and the alternative scheme, if any, to an assistant commissioner, and direct him to hold an inquiry concerning the subject matter of such scheme or schemes.

Section 36. As to framing of schemes.

As soon as may be after the expiration of the said [*three*] months, or the holding of such inquiry by the commissioners or one of them, or the receipt by the commissioners of the report of the assistant commissioner, on the inquiry held by him (as the case may be), the commissioners shall proceed to consider any objections or suggestions made to them in writing respecting the draft scheme, and to consider the alternative scheme (if any), and the report (if any), and thereupon they shall, if they think fit, frame a scheme in such form as they think expedient, and submit it for the approval of the [Committee of Council on Education]:

Provided that where a scheme has been prepared and submitted in pursuance of this Act to the commissioners before the commissioners have prepared the draft of a scheme, the commissioners shall, if requested by the governing body which submitted it, submit such scheme with their own to the [Committee of Council on Education].

Section 39. Appeal to Queen in Council.

If the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected by such scheme, feels aggrieved by the scheme, on the ground—

(1) Of the decisions of the commissioners in a manner by which an appeal to Her Majesty in Council is given by this Act; or
(2) Of the scheme not saving or making due compensation for his or their vested interest as required by this Act; or
(3) Of the scheme being one which is not within the scope of or made in conformity with this Act; or
(4) (If the governing body are the petitioners) of a scheme not having due regard to any educational interests, to which regard is required

by this Act to be had, on the abolition or modification of any privileges or educational advantages to which a particular class of persons are entitled ;

such governing body, person, or body corporate may within *two months* after the publication of the scheme when approved petition Her Majesty in Council stating the grounds of the petition, and praying Her Majesty to withhold her approval from the whole or any part of the scheme. (See *Expiring Laws Act, 1922*, in Appendix.)

Elementary Education Act, 1870. (See Section 86 of this [1944] Act.)

Section 75. Where any school or any endowment of a school was excepted from the Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the [Education Department] a scheme respecting such school or endowment.

The [Education Department] may approve such scheme with or without such modifications as they think fit.

The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under the Endowed Schools Act, 1869 ; and such scheme when approved by the [Education Department] shall have effect as if it were a scheme made under that Act.

A certificate of the [Education Department] that a school was at the commencement of the Endowed Schools Act, 1869, in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes.

Section 78. The [Education Department] shall for the purposes of the Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.

N.B.—(1) Sects. 75 and 78 of the *Elementary Education Act*, 1870, have not been repealed. See Note on Sect. 121 of the 1944 Act for Sect. 83 of the 1870 Act. This section was not repealed by the 1921 Act, but was repealed on 10th August, 1944, by the 1944 Act.

(2) By the 1944 Act the " Ministry of Education " is substituted for the " Education Department."

Apportionment Act, 1870.

An Act for the better apportionment of rents and other periodical payments.

1. This Act may be cited for all purposes as " The Apportionment Act, 1870."

2. From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise), *shall* like interest on money lent, *be considered as accruing from day to day*, and shall be apportionable in respect of time accordingly.

5. In the construction of this Act—

The word " rents " includes rent-service, rent-charge and rent-stock, and also tithes and periodical payments or renderings in lieu of or in the nature of rent or tithe.

The word " annuities " includes *salaries and pensions.*

The word " dividends " includes (besides dividends strictly so called) all payments made by the name of dividend, bonus or otherwise out of the revenue of trading or other public companies, devisable between all

or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such devisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made, but the said word " dividend " does not include payments in the nature of a return or reimbursement of capital.

N.B.—This Act affects payments of salaries to teachers under Sect. 89 of the 1944 Act, and compensation payments to officers under Sect. 98 of the 1944 Act, as well as payments under Teachers (Superannuation) Acts, 1898 to 1925.

The Endowed Schools Act, 1873. [Section 86 (4)]

Section 12. *Amendment of time for objections.*

" Two months " shall be substituted for " three months " in the said section (Section 34 of the Endowed Schools Act, 1869) and all references in the principal Act to the said three months shall be construed to refer to the said two months.

Section 13. *Amendment as to approval of Committee of Council on Education.*

The Committee of Council on Education, as soon as a scheme is submitted to them, shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme.

After the expiration of the said month the Committee of Council on Education may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to require, to the commissioners, and Section 40 of the principal Act, as to the proceedings where a scheme is remitted with a declaration, shall in such case apply.

The Committee of Council on Education as soon as they approve a scheme shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented in pursuance of the principal Act to Her Majesty in Council against the scheme, or such petition as in this section is mentioned is presented to the Committee of Council on Education, such scheme may be approved by Her Majesty without being laid before Parliament.

During the said two months a petition praying that the scheme may be laid before Parliament may be presented to the Committee of Council on Education by the governing body of the endowment to which the scheme relates, or by the council of any municipal borough directly affected by the scheme, or by any inhabitant ratepayers (not less than 20) of any municipal borough or place affected by the scheme.

Section 16. Annual Report.

The commissioners shall make to the Committee of Council on Education in every year a report of their proceedings under the principal Act

[1869] and this Act, and this report shall be laid before Parliament. Such report shall describe all schemes not laid before Parliament which have been approved by Her Majesty during the year for which such report is made.

N.B.—The Order in Council of 11th August, 1902, stated : The report required by Sect. 16 of the Endowed Schools Act, 1873, to be made to the Committee of Council on Education.shall be made to His Majesty the King.

Education (London) Act, 1903.

The Education (London) Act, 1903, was repealed by the 1921 Education Act, *except* paragraph 9 of the First Schedule to the Act.

Paragraph 9 of the First Schedule.

Where *governors or managers are appointed by the Local Education Authority* on the governing body of any institution aided by grant from the Local Education Authority, the provisions of the scheme or trust deed of the institution imposing any limit on the number of the members of the governing body, or requiring any qualification for those members, *shall not apply as respects such governors or managers.*

N.B.—If the L.E.A. for London makes a grant to an institution which is governed by a scheme or a trust deed, which scheme or trust deed limits the numbers or qualifications of governors or managers of the institution, and the London L.E.A. having made a grant thereto, nominate certain managers or governors to serve on the governing body, those so nominated will serve *in addition to the number fixed by the scheme or trust deed,* and further those so nominated need not possess the qualifications specified by the scheme or trust deed.

Education (Administrative Provisions) Act, 1907.

(Sections 2, 8 and 16 of this Act were not repealed by the 1921 Education Act).

Section 2.

The consent of the Board of Education shall be substituted for the consent of the Secretary of State for the Home Department, where the consent of the said Secretary of State is required under Section 14 of the School Sites Act, 1841, and Section 1 of the School Grants Act, 1855 (which relate to sales, exchange or mortgages of school premises).

Section 8. Borrowing from Public Works Loan Commissioners.

The Public Works Loan Commissioners may lend to a Local Education Authority any money which that Authority are authorised to borrow for the purposes of Part II of the Education Act, 1902.

N.B.—Sect. 19 of the 1902 Act empowered a L.E.A. *to borrow* for elementary education purposes under previous Acts, and for higher education purposes under Part II of that (1902) Act. The Public Works Loan Commissioners were authorised to lend under the Public Works Loans Acts of 1875 and 1896 but doubt was expressed as to whether these Acts authorised them *to lend* for higher education purposes. This section gave the Commissioners definite statutory authority to lend for such purposes.

Section 16. Register of Teachers.

(1) Any obligation to frame, form, or keep a register of teachers under paragraph (*a*) of Section 4 of the Board of Education Act, 1899, shall cease : Provided that it shall be lawful for His Majesty by Order in Council

to constitute a registration council representative of the teaching profession, to whom shall be assigned the duty of forming and keeping a register of such teachers as satisfy the conditions of registration established by the council for the time being, and who apply to be registered.

(2) The register shall contain the names and addresses of all registered teachers in alphabetical order in one column, together with the date of their registration, and such further statement as regards their attainments, training, and experience as the council may from time to time determine that it is desirable to set forth.

(3) Any Order in Council under this section may be revoked, altered, or added to by any subsequent Order.

(4) Such provision shall be made by Order in Council under this section as may appear necessary or expedient for transferring any funds or property held by the existing Teachers' Registration Council to the Registration Council to be constituted under this section and for winding up the business of the existing council and thereafter dissolving the council.

(5) The existing Teachers' Registration Council means the Teachers' Registration Council established by Order in Council made under paragraph (*a*) of Section 4 of the Board of Education Act, 1899.

N.B.—Sect. 4 of the Education Act, 1899, authorised the formation by Order in Council of the Consultative Committee (which committee is dissolved by the present 1944 Act). One of the duties of the Consultative Committee was " framing, with the approval of the Board of Education, regulations for a register of teachers."

The intention *appears* to have been to raise the standard of the qualifications of teachers so that the possession of a University Degree should be the ultimate academic qualification for registration. Such a regulation would have precluded a very large number of teachers in public elementary schools, who would be in the anomalous position of possessing a Teachers' Certificate issued by the Board of Education itself, and yet be disqualified from registration on the Board of Education Register of Teachers.

Mr. (Sir) Ernest Grey, M.P., the able representative of the National Union of Teachers on the Registration Council, urged the claims of teachers in elementary schools to be admitted to the register, yet deprecated any attempt to divide the profession by having two registers, one for teachers in public elementary schools and the other for teachers in other schools.

As a compromise the Registration Council provided one register with two columns for the names of registered teachers :—

Column A, for certificated teachers engaged in public elementary schools and in institutions for the training of teachers for elementary schools : and

Column B, for teachers engaged in the other schools (e.g., secondary schools).

In 1903 I published a Guide for Teachers : *How to Register as a Secondary Teacher* (column B).

Sect. 16 of the Education (Administrative Provisions) Act, 1907, provided for the constitution of a registration council, independent of the board, and subsection (2) above abolished the *two column arrangement*, the register should contain the names of " *all* registered teachers in alphabetical order *in one column*." The changes outlined took place in 1912 when the Order in Council was made (29th Feb., 1912) and the funds and property of the older Registration Council were transferred to the newly created body. The board then ceased to have any duties connected therewith.

This Section 16 is the statutory authority for the existence of the Registration Council, and although amendments to the 1944 Bill were suggested both in the House of Commons and in the House of Lords for the repeal of this section, neither House agreed to its repeal.

Mental Deficiency Act, 1913.

[Section 57 (5)]

Section 34. The Lancashire Asylums Board shall, as respects the county of Lancaster and the county boroughs represented on the said board, be the local authority for the purposes of this Act for that county and those county boroughs.

Section 20 (2) of the *Mental Treatment Act, 1930*, stated that the Lancashire Asylums Board and the West Riding of Yorkshire Asylums Board shall respectively hereafter be known, and are in this Act referred to as the Lancashire Mental Hospitals Board and the West Riding of Yorkshire Mental Hospitals Board.

Section 1 (1) of the *Mental Deficiency Act, 1938*, states that "an order made under the Mental Deficiency Act, 1913, that a defective be sent to an institution or placed under guardianship (hereinafter referred to as a "detention order," may be continued by an order made by the board of control under Subsection 2 of Section 11 of that Act, *at any time within a month* after the date on which, but for the provisions of this subsection, the detention order would be limited to expire in accordance with the provisions of the said Section 11, and accordingly every detention order shall, for the purpose of enabling the board to consider the question of its continuance, remain in force for one month after any such date as aforesaid."

Education Act, 1918. (See Section 2 (2) of this 1944 Act.)

Section 45 (1). His Majesty may by Order in Council constitute and incorporate with power to hold land without licence in mortmain one or more official trustees of educational trust property, and may apply to the trustee or trustees so constituted the provisions of the Charitable Trusts Acts, 1853 to 1914, relating to the official trustee of charity lands and the official trustees of charitable funds so far as they relate to endowments which are held for or ought to be applied to educational purposes.

(2) On the constitution of an official trustee or official trustees of educational trust property :—

(*a*) all land or estates or interests in land then vested in the official trustee of charity lands which are held by him as endowments for solely educational purposes ; and

(*b*) all securities then vested in the official trustees of charitable funds which those trustees certify to be held by them as endowments for solely educational purposes,

shall by virtue of this Act vest in the *official trustee or trustees of educational trust property* upon the trusts and for the purposes for which they were held by the official trustee of charity lands and the official trustees of charitable funds, and, on such a certificate by the official trustees of charitable funds as aforesaid being sent to the person having charge of the books or registers in which such securities are inscribed or registered, that person shall make such entries in the books or registers as may be necessary to give effect to this section. (See *Oldham Corporation* v. *Bank of England* [1904] 2 Ch. 716.)

(3) If any question arises as to whether an endowment or any part of an endowment is held for or ought to be applied to solely educational purposes, the question shall be determined by the Charity Commissioners.

Section 47. Where, under any scheme made before the passing of this

Act relating to an educational charity, the approval of the Board of Education is required to the exercise by the trustees under the scheme of a power of appointing new trustees, the scheme shall, except in such cases as the Board may otherwise direct, have effect as if no such approval was required thereunder, and the Board may by order make such modifications of any such scheme as may be necessary to give effect to this provision.

(N.B.—For a definition of an "educational charity," see Sect. 5 and 29 of the Endowed Schools Act, 1869 *ante*.)

Ministry of Agriculture and Fisheries Act, 1919.

Section 7 (1) *and* (2) *as amended by the Eighth Schedule to this* (1944) *Act.*

(1) The council of every county (other than the London County Council) shall, and the London County Council and the council of any county borough may, establish an agricultural committee constituted in accordance with a scheme made by the council and approved by the [Ministry]. A committee may consist partly of persons who are not members of the council.

(2) All matters relating to the exercise by the council of their powers under any Act specified in the Second Schedule to this Act, and all other matters relating to agriculture except such matters as [relate to the functions of local education authorities] and except the raising of a rate or borrowing, shall stand referred to the agricultural committee, and the council, before exercising their powers in relation to any matter so referred, shall, unless in their opinion the matter is urgent, receive and consider the report of the agricultural committee with respect to the matter in question :

Provided that—

(i) (repealed by the Ninth Schedule of this Act);

(ii) if the London County Council or the council of a county borough so resolve matters relating to any of their powers under any Act specified in the said Schedule shall not stand so referred to the agricultural committee.

The proviso (i) now repealed enabled the Ministry on the application of the county council, and after consultation with the Board, to direct that any particular matter relating to agricultural education should be referred to the agricultural committee instead of to the education committee. This proviso is no longer necessary. It has now been agreed between the Minister of Education and the Minister of Agriculture that in future local education committees shall be the local administrators of agricultural education.

N.B.—See the Note on Sect. 2 of this (1944) Act, for the reference of the Minister of Agriculture to a Bill which he proposes to introduce shortly.

Sex Disqualification (Removal) Act, 1919.

An Act to amend the law with respect to disqualification on account of sex. [See Section 4 (2) and (3).]

1. *Removal of disqualification on grounds of sex.*

A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society

(whether incorporated by Royal Charter or otherwise), and a person shall not be exempted by sex or marriage from the liability to serve as a juror. . .

2. *Provision as to women who have qualified for degrees at universities not admitting women to degrees.*

A woman shall be entitled to be admitted and enrolled as a solicitor after serving under articles for three years only if either she has taken such a university degree as would have so entitled her had she been a man, or if she has been admitted to and passed the final examination and kept, under the conditions required of women by the university, the period of residence necessary for a man to obtain a degree at any university which did not at the time the examination was passed admit women to degrees.

3. *Power to universities to admit women to membership, etc.*

Nothing in the statutes or charter of any university shall be deemed to preclude the authorities of such university from making such provision as they shall think fit for the admission of women to membership thereof, or to any degree, right, or privilege therein or in connection therewith.

N.B.—The *Government of India Act, 1935*, in Sect. 275 states : A person shall *not be disqualified by sex* for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order.

Similarly Sect. 445 of the same Act states : A person shall *not be disqualified by sex* for being appointed to any civil service of, or civil post under, the Crown in Burma other than such a service or post as may be specified in any general or special order.

(2) This Act does not apply to Peeresses by their own right, who may desire to receive a summons to attend Sessions of the House of Lords.

In 1922, Viscountess Rhondda petitioned the Crown for a writ of summons thereto. The Committee of Privileges to whom the petition was referred, held that she was not entitled to a seat in the House of Lords. The Committee held that she was " a person who for her life holds *a dignity which does not include the right of a female to exercise* THAT *function at all.*" Consequently, as she had no qualification for such a summons, she was not disqualified by her sex from exercising what she had considered to be her right, and there was nothing for this Statute to act upon, there was no disqualification to be removed by the Act.

Expiring Laws Act, 1922.

[*Sections 86* and *101*]

Section 1. The Acts mentioned in the First Schedule to this Act shall to the extent specified in column 3 of that Schedule become *permanent* Acts.

N.B.—Among the Acts specified in the First Schedule were :—

(i) The Endowed Schools Act, 1869—the whole Act so far as not repealed ; and

(ii) The Welsh Intermediate Education Act, 1889—the whole Act so far as not repealed.

Rating and Valuation Act, 1925. [Paragraph 4 of Part II of Seventh Schedule]

(Extracts from Section 9.)

Section 9.

(1) As from the appointed day, any precept issued by the council of a county . . . shall . . . be sent to the rating authority.

(2) The provisions hereinafter in this subsection contained shall have effect in relation to any precepts issued by . . . councils of counties in respect of any period on or after 1st April, 1929.

(*a*) Expenditure chargeable on two or more parishes or other areas . . . shall not be apportioned between those parishes or areas (in proportion to the yearly value of the property therein as was formerly done).

(*b*) The precept shall require the rating authority of each area affected to levy . . . a rate of such an amount in the pound, being . . . the same amount in the case of each rating area affected, as may be specified in the precept.

N.B.—The *Parochial Assessments Act, 1936*, stated: *Rateable value* is an estimate of the net annual value of the several hereditaments . . . that is to say, of the rent at which the same might reasonably be expected to let from year to year free of all usual tenants' rates and charges and tithe commutation rent charge, if any, and deducting therefrom the probable average cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent.

Local Government Act, 1933.

Section 59 (*5*). Teachers in a school maintained but not provided by a Local Education Authority shall be in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority.

N.B.—Teachers in provided schools are disqualified from membership of *the Authority*, and by the above subsection teachers in nonprovided schools are disqualified, but they may be members of any *committee* appointed by the local authority.

Section 69 (*1*). A candidate at an election of a county councillor, councillor of a borough, district councillor, or parish councillor, shall be entitled for the purpose of holding public meetings in furtherance of his candidature, to the use, without payment and at all reasonable times during the period commencing on the day on which notice of the election is given and ending on the day preceding the day of election, and after reasonable notice, of a suitable room in the school house of any public elementary school situate in a parish wholly or in part comprised in the electoral area in which he is a candidate.

N.B.—This does not apply to the private dwelling house of the teacher. If any expense is incurred in cleaning, heating or lighting, or any damage done to the furniture, etc., the candidate must defray such expenses (Sect. 69 (2)).

In a rural parish if there is no other suitable room, the parish meeting or the meetings of a parish council may be held in a room in a school house under similar conditions (Sect. 128).

Section 75.

Provided that a county councillor elected for an electoral division consisting wholly of a county district or of part of a county district *shall not vote* on any matter involving expenditure on account of which the county district is not, for the time being, liable to be charged.

In *Alderton* v. *Essex County Council* (1937), 53 L.T. 834 it was ruled that this prohibition of voting applied not only to voting at a meeting of the council, but also at committees.

Section 76 (1). If a *member of a local authority* has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter.

N.B.—A general notice may be given in writing to the clerk of the authority (Sect. 76 (4)) and the clerk of the authority shall record in a book particulars of such disclosures or notices (Sect. 76 (5)).

In *England* v. *Inglis*, [1920] 2 K.B. 636 it was decided that :—

An *interest* in a contract must be a material interest, but need not be a pecuniary advantage.

The member of the council in this case was a jeweller and optician. The optical department was carried on by his son, as a paid employee and not as a partner. The son entered into a contract to supply spectacles to children in the schools of the L.E.A. The contract was carried out by the son, who purchased the spectacles, paying therefor with his own cheque. He received payment for the articles supplied, and paid these amounts into his own account. The son alone derived pecuniary benefit from the contract, but the shop was provided by the father, and the establishment charges paid by him. The cases in which the spectacles were provided bore the son's name, but the parent's shop address, which latter fact was claimed helped to advertise the father's business with the consequent probability of increasing his custom.

It was held that this member of the corporation had an "interest" in the contract, and was liable to the penalty specified in the Act.

In *Lapish* v. *Braithwaite*, [1926] A.C. 275, it was decided that an alderman, who was also a shareholder and managing director of companies having current contracts with the council, if paid by salary and not by commission, was not liable.

Proviso to Section 94 (as amended by the Eighth Schedule of this Act).

Provided that a person shall not be disqualified for being a member of an education committee, or a committee appointed for the care of the mentally defective, or of a committee appointed under Section 15 of the Public Libraries Act, 1892, or a sub-committee of any such committee by reason only of his being a teacher or holding any other office in a school or college which is . . . maintained by the local authority appointing the committee or sub-committee.

Section 119. (1) A local authority, other than a parish council, shall in the case of an officer employed by them, whether under this or any other enactment, who by reason of his office or employment is likely to be entrusted with the custody or control of money, and may in the case of any other officer employed by them, either require him to give, or themselves take, such security for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him, as the local authority think fit.

Secction 123. (1) Under this section *an officer employed by the authority* under this or any other enactment, must give notice in writing that he is, directly or indirectly, interested in any contract under consideration.

If any person fails to comply with this requirement he shall for each offence be liable on summary conviction to a fine not exceeding £50 (fifty pounds).

Section 150. Transfer and Compensation of Officers. (See Section 98 of this 1944 Act.)

(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 shewn, to have suffered direct pecuniary loss in consequence of the scheme or order.

(4) A scheme or order made under this part of this Act and providing for the payment of compensation to existing officers shall incorporate the provisions set out in the *Fourth Schedule to this Act.*

(5) For the purposes of this section—

(*a*) the expression "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 the expression "officer" has a corresponding meaning; and

(*b*) the expression "existing officer" means an officer who holds office on the date on which the scheme, or order, is made, or on such other date or dates as may be specified in the scheme or order.

(6) The payment of a lump sum by a local authority by way of compensation to an existing officer under a scheme or order made under this part of this Act shall be a purpose for which the local authority may borrow.

Fourth Schedule to the Local Government Act, 1933.

Provisions as to the 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.

(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 Health] may, on application made to him by the claimant, direct the authority to do so within such time, not being less than a 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 his 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 officer.*

(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 his 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 office within the meaning of this Schedule) as a deputy, assistant or clerk by a permanent officer for the purpose of the discharge of his 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 these 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 emoluments enjoyed by the officer at the material date which he has obtained by virtue of the scheme or order or of anything done in pursuance of or in consequence of the scheme or order; 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 an offer made to him.

(4) For the purpose of assessing any compensation payable in respect 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 would 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.*

. . . . . .

Provided that in the case of an officer who after the 11th November, 1918, 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 Health], 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, and the Minister 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 on granting the compensation, or, in the case of appeal, by the Minister, and shall be recoverable as a debt due from the authority.

(N.B.—See Apportionment Act, 1870, *ante.*)

10. *Suspension of compensation.*

(1) If a person receiving compensation under the scheme or order—

(*a*) obtains any office or other public appointment; or

(*b*) receives, by virtue of the scheme or order, or of anything done in pursuance of or in consequence of the scheme or order 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 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, necessary in order equitably to meet the circumstances of the case.

(2) Where an officer to whom compensation has been awarded under any scheme or order 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 such 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 may prescribe the forms to be used.)

12. *Interpretation.*

For the purposes of this Schedule—

"Office" means . . . [definition as in Section 150 of this Local Government Act above]; "Public appointment" means any employment the emoluments of which are payable out of public funds;

" Scheme or Order " means a scheme or order made under Part VI of this Act, and incorporating this schedule ;
" Service " means whole-time or part-time service in any office after the officer has attained the age of 18 years ;
" Material date " means the date on which the determination of office or diminution of emoluments, as the case may be, takes effect.

Section 163. Power to appropriate land.

(1) 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 are authorised to acquire land.

(3) On the appropriation of land under this section such adjustment shall be made in the accounts of the local authority as [the Minister] may direct.

Section 164. Power to let land.

A local authority may let any land which they possess—
(*a*) with the consent of [the Minister] for any term ;
(*b*) without the consent of [the Minister] for a term not exceeding seven years.

Section 165. Power to sell or exchange land.

A local authority may, with the consent of [the Minister]—
(*a*) sell any land which they may possess and which is not required for the purpose for which it was acquired or is being used ; or
(*b*) exchange any land which they may possess for other land, either with or without paying or receiving money for equality of exchange.

N.B.—Sect. 98 (3) of the 1944 Education Act, substitutes the " Minister " for the " Minister of Health " in Sects. 163, 164 and 165 above.

Section 176. Application of Lands Clauses Acts to purchases by agreement.

Where under this Part of this Act a local authority are *authorised to acquire land by agreement*, the Lands Clauses Acts, except the provisions relating to the acquisition of land otherwise than by agreement and the provision relating to access to the special Act, and except sections one hundred and twenty-seven to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845, shall be incorporated with this Act, and in construing those Acts for the purposes of this section this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the word " land " shall have the meaning assigned to it in this Act.

N.B.—1. The exclusion of Sect. 128 bars the vendors right of pre-emption on the sale of superfluous land.

2. As Sect. 82 of the Act is not excluded the vendors' costs are payable by the local authority.

Section 177. Payment of purchase or compensation money by one local authority to another.

(1) Any purchase money or compensation payable in pursuance of this Part of this Act by a local authority in respect of any land purchased from another local authority which would, but for this section, be required to be paid into court in manner provided by the Lands Clauses Acts may,

if the Minister consents, instead of being paid into court, be paid and applied as the Minister may determine.

(2) A decision of the Minister under this section shall be final.

Section 195. Purposes for which money may be borrowed.

A local authority may with the consent of the sanctioning authority, borrow such sums as may be required for any of the following purposes :—

(*a*) for acquiring any land which the local authority have power to acquire ;

(*b*) for erecting any building which the local authority have power to erect ;

(*c*) for the execution of any permanent work, the provision of plant, or the doing of any other thing which the local authority have power to execute, provide, or do if in the opinion of the sanctioning authority, the cost of carrying out that purpose ought to be spread over a number of years ;

(*d*) . . .

(*e*) any other purpose for which the local authority are authorised under any enactment, including any enactment in this Act or under any statutory order to borrow.

N.B.—The intention of Sect. 195 is to provide a single local government code applicable to existing and future Acts. Clause (*e*) gives power to borrow by the present (1944) Act for purposes of paying compensation in a lump sum to officers.

Section 196. Modes of borrowing.

Where a local authority are authorised to borrow money they may, subject to the provisions of this Part of this Act, raise the money either

(*a*) by mortgage ; or

(*b*) with the consent of the Minister, by stock issued under this Part of this Act ; or

(*c*) by debentures or annuity certificates issued under the Local Loans Act, 1875, as amended by any subsequent enactment.

Section 266. (1) A local authority may enter into contracts necessary for the discharge of any of their functions.

(2) All contracts made by a local authority or by a committee thereof shall be made *in accordance with the standing orders of the local authority*, and in the case of contracts for the supply of goods or materials or for the execution of works, the standing orders shall—

(*a*) require that, except as otherwise provided by or under standing orders, notice of the intention of the authority or committee, as the case may be, to enter into the contract shall be published and tenders invited ; and

(*b*) regulate the manner in which such notice shall be published and tenders invited.

Provided that a person entering into a contract with a local authority shall not be bound to inquire whether the standing orders of the authority have been complied with.

Formerly Sect. 174 of the *Public Health Act, 1875*, governed the question of tenders and contracts. (See p.595 of Ikin and Sparke *Compendium of Precedents*.) The procedure there given has been changed by the repeal of that section of the 1875 Act and Sect. 266 of the *Local Government Act, 1933*, takes its place.

Section 277. Appearance of local authorities in legal proceedings.

A local authority may by resolution authorise any member or officer of the authority, either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction or to appear on their behalf before a court of summary jurisdiction in any proceedings instituted by them or on their behalf or against them, and any member or officer so authorised shall be entitled to institute or defend any such proceedings and, notwithstanding anything contained in the *Solicitors Act, 1932*, to conduct any such proceedings although he is not a certificated solicitor.

N.B.—A retainer of a solicitor by a corporation should be under seal. *Arnold v. Poole Corporation*, (1842) 4 Man. and G. 860; 7 J.P. 227.

Section 290. Power of Government departments to direct inquiries.

(2) For the purpose of any such inquiry (Section 93 of the 1944 Education Act), the person appointed to make the inquiry may by summons require any person to attend, at such place and time as 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 a summons to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are 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 £50 (fifty pounds) or to imprisonment for a term not exceeding six months, or to both 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 the 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 local authority or person shall be recoverable from that authority or person 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.

Section 293. (See Clause 3 (*a*) of First Schedule, Part I of this (1944) Act.)

Power to apply provisions of Act to joint boards, etc.

(1) 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 orders 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.

N.B.—Subsect. (2) (not quoted here) was included to enable *existing* joint boards to obtain before 1st June, 1936, amendments to the provisional order under which they were constituted, without incurring the expense of another provisional order.

Section 294. Travelling expenses of county councillors, etc.

1. Subject to the provisions of this section, a county council may defray any expenses necessarily incurred by members of the council, *or of any committee thereof* to which this section applies, in travelling to and from meetings of the council or committee, or in travelling by direction of the council or committee for the purpose of carrying out any inspection necessary for the discharge of the functions of the council or committee.

(2) . . . .

(3) . . . .

(4) This section shall apply to any committee of a county council appointed for the discharge of functions throughout the whole area for which the county council are charged with those functions, and shall also apply to any sub-committee or joint committee so appointed as if it were a committee of the council.

(5) In this section the expression "sub-committee" means a sub-committee of a county council, and the expression "joint committee" means a joint committee or joint board appointed by a county council jointly with the council of another county or of a borough or of a court of quarter sessions.

The Children and Young Persons Act, 1933.

Section 10. (As amended by the Eighth Schedule of the Education Act, 1944.)

(1) If a person habitually wanders from place to place and takes with him any child [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] he shall unless he proves that the child [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].

(2) Any constable who finds a person wandering from place to place and taking a child [or young person] with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant, and may take the child [or young person] to a place of safety in accordance with the provisions of this Act.

(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 acquitted under this subsection unless it is proved that the child or young person has made at least 200 attendances during the period of twelve months ending with the date on which the proceedings were instituted.]

(4) The Board of Education shall have power to make regulations as to the issue of certificates of attendance for the purposes of the last foregoing subsection, and any such regulations shall be laid before Parliament as soon as may be after they are made.

Section 18. Restrictions on the employment of children [as amended].

(1) Subject to the provisions of this section and of any byelaws made thereunder, no child shall be employed—

(*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]

(*b*) before the close of school hours on any day on which he is required to attend school ; or

(*c*) before six o'clock in the morning or after eight o'clock in the evening on any day ; or

(*d*) for not more than two hours on any day on which he is required to attend school ; or

(*e*) for more than two hours on any Sunday ; or

(*f*) to lift, carry or move anything so heavy as to be likely to cause injury to him.

(2) A local authority may make byelaws with respect to the employment of children, and any such byelaws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances, and may contain provisions—

(*a*) Authorising—

(i) the employment of children [before they reach the age at which employment ceases to be prohibited under paragraph (*a*) of the last foregoing subsection].

(ii) the employment of children (notwithstanding anything in paragraph (*b*) of the last foregoing subsection) for not more than

one hour before the commencement of school hours on any day on which they are required to attend school;

(*b*) prohibiting absolutely the employment of children in any specified occupation;

(*c*) prescribing—

(i) the age below which children are not to be employed;

(ii) the number of hours in each day, or in each week, for which, and the times of day at which, they may be employed;

(iii) the intervals to be allowed to them for meals and rest;

(iv) the holidays or half holidays to be allowed to them;

(v) any other conditions to be observed in relation to their employment, so, however, that no such byelaws shall modify the restrictions contained in the last foregoing subsection save in so far as is expressly permitted by paragraph (*a*) of this subsection, and any restriction contained in any such byelaws shall have effect in addition to the said restrictions.

(3) Nothing in paragraph (*c*) or in paragraph (*d*) of subsection (1) of this section, or in any byelaw made under this section, shall prevent a child from taking part in an entertainment under and in accordance with the provisions of a licence granted and in force under the provisions of this Part of this Act.

N.B.—See Sect. 120 (5) of the 1944 Education Act for reference to Byelaws made by the council of a county district which are in force immediately before 1st April, 1945. These shall continue in operation as if they had been made by the L.E.A. for the area in which the county district is situated.

Section 22. (*Restrictions on children taking part in entertainments, as amended by the Eighth Schedule.*)

(3) Subject to such restrictions and conditions as may be prescribed by rules made by the [Ministry] of Education, a local authority may grant a licence for a child who has attained the age of twelve years and is residing in their area to take part in any specified entertainment or series of entertainments, whether within or without that area:

Provided that—

(*a*) no licence shall be granted unless the local authority are satisfied that the child is fit to take part in the entertainment or series of entertainments and that proper provision has been made to secure his health and kind treatment; and

(*b*) no licence shall be granted in respect of any entertainment which is to take place on a Sunday.

[(3A) A licence granted under this section shall specify the times, if any, during which the child to whom 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 or governors or proprietor of the school.]

[N.B.—This Subsection 3A is new.]

Section 30. [*A person who is attending a public elementary school and who attains the age of fourteen years during a school term shall not (except for the purposes of the provisions relating to employment abroad) be deemed to cease to be a child until the end of that term.*]

Section 46 (3). The Lord Chancellor may by rules assign to juvenile courts the hearing of any applications for orders or licences relating to children or young persons, being applications cognisable by justices, courts of summary jurisdiction, or petty sessional courts, if, in his opinion, it is desirable in the interests of the children and young persons concerned that such applications should be heard by juvenile courts.

[*For the purposes of this subsection, any complaint under section forty-four or section forty-five of the Education Act, 1921 (which sections relate to the making of school attendance orders and to the proceedings to be taken where such orders are disobeyed), or under section fifty-four of that Act (which relates to the making of orders requiring defective or epileptic children to be sent to suitable schools or classes) shall be deemed to be an application for an order relating to a child.*]

The parts of Sects. 30 and 46 *in italics* are repealed by Part I of the Ninth Schedule as from 1st April, 1945.

Section 61. Definition of "in need of care or protection."

(1) For the purposes of this Act a child or young person in need of care and protection means a person who is

(*a*) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control; or

(*b*) a child or young person who

(i) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or

(ii) being a member of the same household as a child or young person in respect of whom such an offence has been committed; or

(iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or

(iv) being a female member of a household whereof a member has committed an offence under the Punishment of Incest Act, 1908, in respect of another member of that household;

requires care and protection; or

(*c*) a child [or young person] in respect of whom an offence has been committed under section ten of this Act (which relates to the punishment of vagrants preventing children [or young persons] from receiving education).

N.B.—The words in square brackets in Subsect. (1) (*c*) above were added by the Eighth Schedule of the Education Act, 1944.

Section 96. (*Provisions as to local authorities*, as amended by the Eighth Schedule.)

(1) Subject to the modifications hereinafter contained as to the City of London, where any powers or duties are by this Act conferred or imposed on local authorities (by that description) these powers and duties shall be powers and duties of local education authorities.

(2) (Repealed by the Education Act, 1944.)

(3) Expenses incurred by a local authority in connection with powers and duties which are under this Act, exercised and performed by them as local education authorities [shall be defrayed as expenses under the enactments relating to education].

(4) Expenses incurred under this Act by the council of a county or county borough exclusive of any expenses to be defrayed [in accordance with] the last foregoing subsection, shall be defrayed :—

(*a*) in the case of expenses incurred by the council in their capacity of poor law authority, as expenses of administering the *Poor Law Act, 1930* ; and

(*b*) in any other case, as expenses for general county purposes, or, as the case may be, out of the general rate.

(N.B.—For expenses generally see Part VIII of the *Local Government Act, 1933.*)

(5) A local authority may, for the purposes of their functions under this Act, acquire, dispose of, or otherwise deal with land.

(*a*) Repealed by the Local Government Act, 1933, Eleventh Schedule.

[See Sects. 163, 164 and 165 of the *Local Government Act, 1933*, above for powers for dealing with land.]

(6) A local authority may borrow for the purposes of this Act—

(*a*) In the case of the London County Council, under and in accordance with the *London County Council (Finance Consolidation) Act, 1912*, as amended by any subsequent enactment :

The remainder of this subsection was repealed by the Eleventh Schedule of the *Local Government Act, 1933.* See Sects. 195 and 196 of that Act given above.

(7) [. . .] a local authority may refer to a committee appointed for the purposes of this Act, or to any committee appointed for the purposes of any other Act, any matter relating to the exercise by the authority of any of their powers under this Act and may delegate any of the said powers (other than any power to borrow money) to any such committee.

(8) A local authority, or a committee to whom the powers of a local authority under this Act have been delegated, may by resolution empower the clerk or the chief education officer of the authority to exercise in the name of the authority in any case which appears to him to be one of urgency any powers of the authority or, as the case may be, of the committee with respect to the institution of proceedings under this Act.

Section 106. (1) An order or other Act of the Secretary of State under this Act may be signified under the hand of the Secretary of State or an Under-Secretary of State or an Assistant Under-Secretary.

(2) A document purporting to be a copy—

(*a*) of an order made by a court under or by virtue of any of the provisions contained in Sections 56, 57 and 62 to 90 of this Act or in the Fourth Schedule to this Act ; or

(*b*) *of an order made after the commencement of this Act under section forty-five of the Education Act, 1921, sending a person to an approved school or committing him to the care of a fit person* ; or

(*c*) of an affiliation order referred to in an order under section eighty-eight of this Act,

shall, if it purports to be certified as a true copy by the clerk of the court, be evidence of the order.

Paragraph (*b*) was repealed by Part I of the Ninth Schedule.

Unemployment Insurance Act, 1935.

[Section 44.]

Section 76. (1) *Every education authority shall . . . submit to the Minister of Labour] proposals for the provision of courses of instruction as may be*

necessary for persons in its area between the minimum age for entry into insurance and the age of eighteen years who are capable of and available for work but who have no work or only part-time or intermittent work.

This subsection 76 (1) *in italics* will be repealed by Part II of the Ninth Schedule.

Section 78. (1) If any person (whether an insured contributor or not) who is between the age for entrance into insurance and the age of eighteen years is capable of and available for work but has no work or only part-time or intermittent work, the Minister [of Education] may require his attendance in accordance with regulations at any authorised course at which he can reasonably be expected to attend.

(2) If any person whose attendance at an authorised course has been required by the Minister [of Education] under this section fails, except by reason of sickness or other unavoidable cause, to attend at that course, then :—

(*a*) [In England and 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.] (This paragraph (*a*) inserted by the Eighth Schedule.)

(3) For the purposes of the last foregoing subsection and of any such proceedings as are therein mentioned, a person who, by reason of his misbehaviour while attending at any course, has been required to discontinue his attendance thereat for any period shall be deemed to have failed without unavoidable cause to attend at that course.

(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.] (This subsection was inserted by the Eighth Schedule of the 1944 Act.)

Section 81. (1) An education authority in England shall have power, in accordance with a scheme to be approved by the Minister [of Labour], to make arrangements for giving to persons under the age of eighteen years assistance with respect to the choice of suitable employment by means of the collection and communication of information and the furnishing of advice, and to undertake such additional duties as are specified in the scheme, being duties in connection with :—

(*a*) the attendance at authorised courses of persons under the age of eighteen years ; or

(*b*) the administration of benefit claimed by persons under [the age of eighteen years] ; or

(*c*) the administration of increase of benefit claimed in respect of

dependent children between the ages of fourteen and sixteen years.

(2) Where a scheme under this section is in force :—

(*a*) there shall out of the unemployment fund be repaid to the education authority sums equal to the aggregate amount from time to time paid in benefit by the authority ; and

(*b*) there shall from time to time be paid out of moneys provided by Parliament to the education authority in respect of administrative expenses such sums as may be determined in accordance with regulations made by the Minister [of Labour] with the consent of the Treasury.

Section 87. This section deals with *general provisions* for prosecutions under the Act. [As amended by the Education Act, 1944, prosecutions under section seventy-eight above are exempted from these general provisions.]

Section 104. This section deals with the power of the Minister [of Labour] to make regulations under the Act. [As amended by the Education Act, 1944, regulations under section seventy-eight are exempted therefrom.]

Section 113. [*Interpretation.*]

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

(*a*) " Application for benefit " means an application for benefit made in the prescribed manner ;

(*b*) " 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.

N.B.—This definition of " authorised course " will be added by Part II of the Eighth Schedule.

Sect. 76 of the Unemployed Insurance Act, 1935, will be *repealed*, and Sects. 78, 81, 87, 104 and 113 will be *amended* as above, when Sect. 44 of the Education Act, 1944, comes into operation. Also, Sect. 1 of the Unemployment Insurance Act, 1938, which authorises education authorities to supply milk and biscuits free of charge, and other meals on conditions, subject to the approval of the Minister of Labour will be repealed from the same date.

Public Health Act, 1936.

Section 205. " If the occupier of a factory or workshop knowingly allows a woman to be employed therein within four weeks after she has given birth to a child, he shall be liable to a fine not exceeding five pounds (£5), or if he has been previously convicted of a like offence within two years to a fine not exceeding ten pounds (£10)."

(N.B.—The four weeks period begins on *the day following that of the birth* and includes the last day of the period.)

Section 218. Where a child is removed under this part of this Act to

a place of safety, the welfare authority may defray the expenses of his maintenance therein.

Section 250. " A canal boat shall not be used as a dwelling
(*a*) unless it is duly registered under this part of this Act by some registration authority for the canal on which the boat is accustomed or intended to ply."

Section 253 gives the penalty for contravention of this Act as " a fine not exceeding five pounds (£5) and a further fine of forty shillings for each day on which after conviction for the offence the boat is so used, or the non-compliance continues."

National Health Insurance (Juvenile Contributors and Young Persons) Act, 1937.

Section 1. (1) If a person who has attained the school-leaving age, but has not attained the age of sixteen, is at the commencement of this Act, or at any date becomes, employed within the meaning of the National Health Insurance Act, 1936, he shall, as from the commencement of this Act or, as the case may be, that subsequent date, become entitled to medical benefit as if he were an insured person and, notwithstanding that he may cease to be so employed, shall continue to be entitled until either :—
(*a*) at the end of the half-year in which he attains the age of sixteen years and six months ; or
(*b*) the date on which he first becomes, or but for a certificate of exemption would have become, an insured person under Section 1 of the National Health Insurance Act, 1936,
whichever first occurs.

(2) Gives some definition.

(3) Persons who are entitled to medical benefit by virtue of this section are in this Act referred to as " juvenile contributors."

Section 6. It is the duty of every local education authority to make arrangements for their officers to furnish, on the application of a medical practitioner or of an insurance committee on his behalf, for his confidential information, such particulars as to the school medical record *of any young person whom he has accepted for treatment*, and such other information in their possession relating to the medical history of that person as the medical practitioner may deem necessary for the purpose of his functions in relation to the provision of medical benefits for that person.

In this section a " young person " means a person under the age of eighteen.

The Factories Act, 1937.

Section 152. " Young person " means a person who has ceased to be a child but has not attained the age of eighteen [but does not include any person whose parent is required under or by virtue of the Education Acts, 1921 to 1932, to cause him (unless there is some reasonable excuse) to attend school or to attend an alternative course within the meaning of the Education Act, 1936.]

N.B.—The words after " age of 18 " in the second line, to the end of the definition are repealed by the Ninth Schedule of the Education Act, 1944.

Physical Training and Recreation Act, 1937.

[Section 53 and the Ninth Schedule of this 1944 Act]

Section 1. *National Advisory Councils.*

Repealed.

2. *Local Committees and Sub-Committees.*

Repealed.

3. *Powers of the Board of Education.* (As amended by the Education Act, 1944).

(1) The Board of Education (hereinafter in this Act referred to as "the Board") may in accordance with arrangements approved by the Treasury, make grants :—

(*a*) towards the expenses of a local authority or local voluntary organisation in providing, whether as part of wider activities or not, or in aiding the provision of facilities for physical training and recreation, including, but without prejudice to the generality of the foregoing words, the provision and equipment of gymnasiums, playing fields, swimming baths, bathing places, holiday camps and camping sites, and other buildings and premises for physical training and recreation ;

(*b*) towards the expenses of a local authority or local voluntary organisation in respect of the training and supply of teachers and leaders ; and

(*c*) to the funds of any national voluntary organisation having such objects as aforesaid, either in aid of its work as a whole, or in aid of any specified branch of its work.

The powers of the Board under paragraph (*a*) of this subsection shall not extend to the making of a grant in aid in the maintenance of such facilities as aforesaid, except that, if the Board certify that the circumstances of a local voluntary organisation are such that special hardship or difficulty would be occasioned if such a grant were not made to it, the Board may make such a grant.

(2) The Board when making a grant under the preceding subsection may attach thereto such conditions, including, in the case of a grant to a voluntary association, conditions for securing the continuity of the undertaking assisted, as the Board may think proper.

(3) The Board may, with the approval of the Treasury, take steps for disseminating knowledge with respect to the value of physical training and recreation.

4. *Extension of powers of local authorities.*

(1) A local authority may acquire, lay out, provide with suitable buildings and otherwise equip and maintain lands, whether situate within or without their area, for the purpose of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, societies or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use of any of the purposes aforesaid.

The authority may also provide and, where necessary, arrange for the training of, such wardens, teachers and leaders as they may deem requisite for securing that effective use is made of the facilities for exercise, recreation and social activities so provided.

(2) Section 70 of the Public Health Act, 1925 (which relates to the use of public offices for entertainments and the like), shall apply in relation to any premises provided by a local authority under the preceding subsection as if those premises were offices for the transaction of business, and as if any local authority as defined by this Act were a local authority for the purposes of the said section seventy.

(3) A county council may provide public swimming baths and bathing places under Part VIII of the Public Health Act, 1936, and, accordingly, in sections two hundred and twenty-one to two hundred and twenty-nine of that Act any reference to a local authority or their district shall, in relation to public swimming baths and swimming places, be construed as including a reference to a county council or their county.

(4) A local authority may contribute towards expenses incurred by another local authority, whether under this or any other Act, or by a voluntary organisation, in providing or maintaining within the area of the contributing authority, or on a site where it will benefit any of the inhabitants of that area, anything mentioned in subsection (1) of this subsection, or a swimming bath or bathing place.

(5) Section sixty-nine of the Public Health Act, 1925, and so much of the Museums and Gymnasiums Act, 1891, as relates to gymnasiums, shall cease to have effect and any property held by a local authority for the purposes of the enactments thus repealed shall, without any necessity of formal appropriation, be held by them for the purposes of this section.

5. *Supplemental provisions as to exercise of powers by local authorities.*

(1) The purposes of the last preceding section and the provision of swimming baths and bathing places under Part VIII of the Public Health Act, 1936, shall be purposes for which any local authority other than a parish council may purchase land compulsorily by means of a compulsory purchase order made by the authority and confirmed by the Minister of Health and, accordingly, so far as these purposes are concerned, the provisions of the Local Government Act, 1933, relating to the compulsory acquisition of land by means of such an order shall be deemed to extend to the administrative county of London and shall have effect as if any reference therein to a local authority were a reference to a local authority as defined by this Act.

(2) Expenditure incurred for any of the said purposes by the common council of the city of London or the council of a metropolitan borough shall be defrayed out of the general rate, and those purposes shall be purposes for which any such council may borrow money as for purposes of the Public Health (London) Act, 1936.

6. Section 6 is repealed by the Ninth Schedule of this 1944 Act.

7. *National College of Physical Training for England and Wales.*

The Board may provide, maintain and aid a National College of Physical Training for England and Wales, or more than one such college, and may make such provision with respect to the management thereof as they think proper.

8. *Expenses of executing Act.*

(1) All expenses incurred by the Board for the purposes of this Act, including the amount of any grants paid or payable under or by virtue of this Act, shall be defrayed out of moneys provided by Parliament.

(2) This subsection (which is repealed by the Ninth Schedule of this Act) referred to payments in connection with National Advisory Councils and their committees appointed under Sections 1 and 2 of this Act which are likewise repealed).

9. *Interpretation.*

In this Act, unless the context otherwise requires—

" local authority " means the council of a county, county borough, metropolitan borough, county district or parish, and the common council of the city of London.

" voluntary organisation " means any person or body of persons, whether corporate or unincorporate, carrying on, or proposing to carry on, an undertaking otherwise than for profit.

Administration of Justice (Miscellaneous Provisions) Act, 1938.

Amendment of the Law with regard to proceedings heretofore usually dealt with on the Crown side of the King's Bench Division of the High Court.

Section 7. (1) The prerogative *writs* of mandamus, prohibition and certiorari *shall no longer be issued* by the High Court.

(2) In any case where the High Court would, but for the provisions of the last foregoing subsection, have had jurisdiction to order the issue of a *writ of mandamus* requiring any act to be done, or a writ of prohibition prohibiting any proceedings or matter, or a writ of certiorari removing any proceedings or matter into the High Court or any division thereof for any purpose, the court may make an order requiring the act to be done,or prohibiting or removing the proceedings or matter as the case may be.

(3) The said orders shall be called respectively an order of mandamus, an order of prohibition, or an order of certiorari.

N.B.—*Mandamus* (we command) was a term originally applied to writs, letters missive or mandates issued by the Sovereign directing the performance of certain acts, but subsequently restricted to the judicial writ issued in the King's name from the Court of King's Bench (now from the Crown side of the King's Bench Division of the High Court of Justice) and directed to an inferior court, a corporation, an officer, etc., commanding some specified thing to be done.

Baking Industry (Hours of Work) Act, 1938.

[Section 44]

Section 1.

(1) Subject to the provisions of this Act, no person shall be employed in any factory, in the manufacture of bread or flour confectionery or in any other work incidental thereto, between the hours of eleven o'clock in the evening and five o'clock in the morning [of the next day].

(2) The Secretary of State may, on the application of any trade board or association of employers or workers which appears to him to be concerned, make regulations restricting the extent to which persons who, otherwise than in pursuance of a contract of service, engage by way of trade or for purposes of gain in the manufacture of bread or flour confectionery or in

any other work incidental thereto, may be so engaged between the hours of eleven o'clock in the evening and five o'clock in the morning [of the next day].

Section 2. First special exception.

(1) The occupier of a factory may secure in accordance with the provisions of this Act that the special exception for which this section provides shall apply in respect to that factory, and, whilst that special exception so applies, no other special exception for which this Act provides shall apply in respect of that factory.

(2) Whilst the said special exception applies in respect of a factory, section one of this Act shall not operate so as to prohibit the employment of a person in that factory between the hours of eleven o'clock in the evening and five o'clock in the morning [of the next day] on any night unless he was employed in that factory between the said hours in the manufacture of bread or flour confectionery or in any other work incidental thereto on five previous nights in the same week.

Section 3. Second special exception.

(1) Similar to Section 2 (1) above.

(2) Whilst the said special exception applies in respect of a factory, section one of this Act shall not operate so as to prohibit the employment of persons in that factory between the hours of eleven o'clock in the evening on Fridays and five o'clock in the morning on Saturdays, or between the hours of four o'clock and five o'clock in the morning on any day in the week.

Section 4. Third special exception.

(1) Similar to Section 2 (1) above.

(2) Whilst the said special exception applies in respect of a factory, section one of this Act shall not operate so as to restrict the employment of a person in that factory in any week unless he was employed in that factory in the manufacture of bread or flour confectionery or in any work incidental thereto between the hours of eleven o'clock in the evening and five o'clock in the morning [of the next day] in more than one-half of the weeks in the period of five weeks immediately preceding the said week.

(3) The Secretary of State may by order direct that as respects any factory specified in the order the provisions of the foregoing subsection shall have effect as if for the reference to five weeks there were substituted a reference to such alternative number of weeks as may be specified in the order.

Section 5. (*Requirements relating to special exceptions.*)

Section 6. (*Power of Secretary of State to provide for modifications of, and exemptions from the restrictions imposed by the Act.*)

Section 7. (*This Act not to apply to biscuit factories.*)

Section 8.

(1) Repeal of parts of the Making and Sale of Bread Act, 1823.

(2) Restrictions relating to work on Sundays contained in the *Sunday*

Observance Act, 1677, shall, so far as they affect the manufacture of brea and flour confectionery, cease to have effect.

Section 13. (Definitions), e.g., " week " means the period between noo on any Sunday and noon on the succeeding Sunday.

N.B.—These sections of this Act may be useful for reference when applica tions for change of hours of attendance at a young people's college are mad on account of night work in a bakery under Sect. 44 (4) of this Act.

Children and Young Persons Act, 1938.

Power to deal with children and young persons who become in need of medica treatment while under detention.

Section 6.—(1) Where, with respect to a child or young person who i being detained in a place of safety under an interim order having effec by virtue of subsection (2) of Section 67 of the principal Act [1933] or b virtue of subsection (2) of Section 3 of this Act [1938] the court by whic the order is made is satisfied, on any occasion that, by reason of illness o accident, he is unable to appear personally before the court, any furthe interim order which the court has power to make on that occasion, may b made in the absence of the child or young person.

(2) If at any time while there is in force an order made by a court unde Section 33, Section 54, Section 67, or Section 69 of the principal Act [1933 or under subsection (2) of Section 3 of this Act [1938] for the detentio of a child or young person in a remand home or in some other place o safety the child or young person is found, by reason of illness or accident or for any other reason, to be in need of any medical treatment or exam ination which cannot properly be given or made in the remand home o other place of safety, *the person in charge of the remand home* or other plac of safety, may *remove the child or young person therefrom to any place o safety being a place in which the necessary treatment or examination can b given or made*; and the order shall so long as it remains in force :—

(*a*) apply to the child or young person as if, whilst being so remove to the last-mentioned place of safety, whilst detained therein fo the purpose of giving the treatment or making the examinatio and whilst being taken back to the place from which he was s removed, he continued to be detained in the remand hom or other place of safety specified in the order, and

(*b*) be deemed to authorise the child or young person to be taken to th court from any place to which he has lawfully been removed b virtue of the subsection.

(3) Whenever, in pursuance of the last preceding subsection a child o young person is removed . . . *the person by whom he is so removed* sha forthwith give written notice of the fact to the clerk of the court by whic the order was made.

N.B.—*Sect.* 3 and parts of *Sect.* 4 of this 1938 Act which deal with th power of courts to make or vary supervision orders under the Educatio Act, 1921, were repealed by the Ninth Schedule of the 1944 Education Ac

Young Persons (Employment) Act, 1938.

Section 1. (2) A young person to whom this Part of this Act applies sha not be employed continuously for more than five hours without an interv of at least half an hour for a meal or rest, and where the hours of employmen include the hours from half-past eleven in the morning to half-past tw

in the afternoon, an interval of not less than three-quarters of an hour shall be allowed between those hours for dinner.

(3) On at least one weekday in each week, to be notified in the prescribed form and manner, a young person to whom this part of this Act applies shall not be employed after one o'clock in the afternoon.

(4) A young person to whom this Part of this Act applies shall, in every period of twenty-four hours between midday on one day and midday on the next day, be allowed an interval of at least eleven consecutive hours which shall include the hours from ten o'clock in the evening until six o'clock in the morning.

Section 9. (1) "Young person" does not include a *child* where employment is regulated by section eighteen of the Children and Young Persons Act, 1933, but save as aforesaid means a person who has not attained the age of eighteen years.

Blind Persons Act, 1938.

Section 1. (This lowers from fifty to forty years the age which blind persons must have attained in order to be entitled to old age pensions under the Old Age Pensions Act, 1936.)

Section 2. (This substitutes the following for subsection (1) of Section 2 of the Blind Persons Act, 1920) :

(1) It shall be the duty of the council of every county or county borough to make arrangements for promoting the welfare of blind persons ordinarily resident in the area of the council, and the things which such a council may do in the performance of their said duty shall include the provision and maintenance, or the making of contributions towards the provision and maintenance, of workshops, hostels, homes or other places (whether in or outside the area of the council) for the reception of blind persons, and any other things the doing of which appears to the council to be desirable for the purpose of the performance of that duty.

(The remainder of this subsection deals with the computation of the resources of a blind person to determine his needs.)

Section 5.

In the principal Act [1920] and in this Act the expression "blind person" means a person so blind as to be unable to perform any work for which eyesight is essential.

Street Playgrounds Act, 1938.

[Section 53]

Section 1. (1) The council of any county, county borough, etc. . . . shall have power for the purpose of enabling any roads within their area *in respect of which they are the Highway Authority* to be used as a playground for children to make an order prohibiting or restricting, subject to such exceptions and conditions as to occasional user or otherwise as may be specified in the order, the use of any specified road by vehicles, or by vehicles of any specified class or description, either generally or on particular days or during particular hours :

Provided that an order made under this section with respect to any

road shall make provision for permitting reasonable access to premises situated on or adjacent to the road.

(2) No order made under this section shall be of any effect until it is confirmed by the Minister of Transport.

[Twenty days are allowed for objections before confirmation with or without modifications.]

Section 2. (1) Byelaws may be made authorising the use of the road for that purpose [as a playground] and making provision with respect to the admission of children to the road when used as a playground, and with respect to the safety of children so using the road and their protection from injury by vehicles using the road for access to premises situated on or adjacent to the road or otherwise, and generally with respect to the proper management of the road when used as a playground as aforesaid.

(2) The Minister of Transport shall be the confirming authority as respects byelaws made under this section.

London Government Act, 1939.

Section 106. Power to appropriate land. [Section 117 of the 1944 Education Act.]

(1) Any land belonging to a local authority and not required for the purposes for which it was acquired or has been subsequently appropriated may, with the consent of the Minister [of Health], be appropriated for any other purpose for which the authority is authorised to acquire land.

(2) In the case of appropriation under this section of land acquired under any enactment (including any enactment in this Act) or statutory order incorporating the Lands Clauses Acts, any work executed on the land after the appropriation has been effected shall, for the purposes of section sixty-eight of the *Lands Clauses Consolidation Act, 1845*, be deemed to have been authorised by the enactment or statutory order under which the land was acquired.

(3) On an appropriation under this section of land belonging to a local authority, such adjustments shall be made in the accounts of the authority as may be necessary.

Section 107. Power to let land.

A local authority may let any land belonging to it—

(*a*) with the consent of the Minister [of Health], for any term;

(*b*) without such consent, for a term not exceeding seven years.

Section 108. Power to sell or exchange land.

A local authority may, with the consent of the Minister [of Health]:—

(*a*) sell any land belonging to it;

(*b*) exchange any land belonging to it for other land, either with or without paying or receiving any money for equality of exchange.

Section 206. Definitions.

"*Borough*" means metropolitan borough.

"*County Council*" means the London County Council.

"*The County*" means the administrative county of London.

"*County of London*" means the county exclusive of the City of London.

"*Land*" includes any interest in land and any easement or right in, to or over land.

"*Local authority*" means the county council or a borough council.
"*Officer*" includes a servant.
"*Property*" includes all property, real and personal, and all estates, interests, easements and rights whether equitable or legal, in, to, and out of proprety, real and personal.
"*Sale*" includes a sale in consideration of a chief rent, rent charge or other similar periodical payment, and the expressions "sell" and "purchase" have corresponding meanings.

Limitation Act, 1939.

[Section 115]

Section 21. Limitation of actions against public authorities.

(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued :

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

N.B.—The Act of 1893 gave protection to public authorities after six months. Here the period is increased to twelve months.

Local Government Staffs (War Service) Act, 1939.

[Section 98]

Section 1. Payments to make up civil remuneration.

(1) Where a person serving in any capacity specified in the first column of the Schedule to this Act (hereafter in this section referred to as "his civil capacity") ceases to serve in order to undertake war service, the appropriate authority shall have power to make to or in respect of him such payments as are hereafter in this section provided.

(2) While any such person is engaged in war service, the appropriate authority may pay to him, or to or for the benefit of his wife or other dependants nominated by him, a sum which shall not exceed the remuneration which he would have received if he had continued to serve in his civil capacity, after deducting therefrom his war service pay.

(3) In the event of the notification of the death of any such person whilst engaged in war service, or of his having become missing while so engaged, being given by the authority competent in that behalf, the appropriate authority may, during a period not exceeding twenty-six weeks from the date of the notification, pay to or for the benefit of his wife or other dependants such sum as might have been paid to him under the last preceding subsection if he had been so engaged during that period :

Provided that in fixing the sum to be paid under this subsection, regard shall be had to any pension or other sum payable to or for the benefit of the wife or other dependants out of public or charitable funds.

(4) In this section the expression "appropriate authority" in relation to a person serving in any capacity specified in the first column of the Schedule to this Act, means the authority specified in the second column of that Schedule in relation to that capacity.

EXTRACTS FROM THE SCHEDULE TO THE ACT

Civil capacity	*Appropriate authority for the purposes of Section 1*
14. Employee of a local authority otherwise than in war service.	The local authority.
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.	The local education authority.
16. Teacher, officer or servant of an institution aided by a local education authority out of the proceeds of any rate.	The local education authority.
17. Teacher, officer or servant of an educational institution to which it is certified by the Board of Education that it is expedient that section one of this Act should apply notwithstanding any point affecting the institution.	The managers or other governing body of the institution.

War Damage Act, 1943.

Section 75. Local Authorities: payments and contributions in respect of certain transferred schools.

(1) Where an elementary school has been transferred to the Local Education Authority for elementary education under Section 38 of the *Education Act, 1921*, or under Section 23 of the *Elementary Education Act, 1870*, and Section 25 of and the Second Schedule to the *Education Act, 1902*, or the authority has an interest in the premises of such a school under a lease granted whether by virtue of a scheme made under the *Charitable Trusts Acts*, 1853 to 1925, or otherwise, the Board of Education may, with the consent of the authority and of the trustees of the school, by order made as respects the whole or any part of the premises of the school direct that the provisions of this part of this Act relating to the recovery and ultimate incidence of instalments of contributions, and to payments in respect of war damage thereunder, shall apply as if the premises of the school, or the part thereof to which the order relates, as the case may be, *were vested in the authority* for all the interest therein belonging to the trustees or otherwise held in trust for the school.

(2) In relation to a case where the transfer or lease affects part only of the premises of the school, subsection (1) of this section shall apply as if the reference to the premises of the school were references to that part of the premises.

(3) . . . .

(4) An order made under subsection (1) of this section shall apply as well in the relation to an instalment of contribution falling due in a year, the relevant date in which fell between the transfer, or the commencement of the interest of the authority, as the case may be, and the date of the making of the order but not discharged at that date as in relation to an

nstalment of contribution falling due in a year the relevant date in which alls after that date.

N.B.—When discussing the War Damage (Amendment) Bill, 1942, in which this section first appeared, the Attorney-General said, the trouble is under the Bill as it stands, an undertaking by the occupying tenant to pay outgoings does not apply to War Damage contributions, and that is not to be treated as a covenant with regard to the outgoings of a lease. There are also provisions which impede the sharing of contributions otherwise than in accordance with the Act.

Now under Section 75 reproduced above if the local education authority is agreeable that it should pay the whole of the contributions, or come to some arrangement with the trustees acceptable to both, they are able to do so, *subject to the approval of the Board of Education*, and the contribution will, in fact, be paid according to the realities of the situation not hampered, as it is at present, by the actual form which these transactions have taken.

leinstatement in Civil Employment Act, 1944.

Obligation to reinstate former employees

1. Obligation of employers to reinstate former employees.—(1) Subject o the provisions of this Act, where a person to whom this Act applies vhose war service ends after the commencement of this Act makes an ıpplication to his former employer to be taken into his employment, the ormer employer shall, so long as the application remains in force, be ınder an obligation to take the applicant into his employment—

(*a*) in the occupation in which the applicant was last employed by the former employer before the beginning of his war service and on terms and conditions not less favourable to him than those which would have been applicable to him in that occupation had he not become a person to whom this Act applies ; or

(*b*) if it is not reasonable and practicable that the applicant should be taken into employment in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are reasonable and practicable in his case.

(2) The said obligation shall be an obligation to take the applicant into mployment as aforesaid at the first opportunity (if any) at which it is easonable and practicable for the former employer so to do on or after uch date as may be notified to him in accordance with section three of his Act as the date on which the applicant will be available for employnent ; and accordingly if the former employer, after giving reasonable ıotice thereof to the applicant, makes such employment as aforesaid avail- ble to him at the said first opportunity, his obligation shall be discharged :

Provided that—

(*a*) an opportunity for taking the applicant into his former employer's employment shall not be deemed for the purposes of this subsection to have arisen if—

(i) the former employer makes employment available to the applicant, but the applicant has, or reasonably believes that he has, reasonable cause for not taking it ; and

(ii) the facts on which the applicant relies as constituting the reasonable cause are notified in writing to the former employer by him or by some person acting with his authority as soon as may be after he has been notified by the former employer that the employment is being made available to him ; and

(*b*) in no case shall the former employer be under any obligation under this section to take the applicant into his employment after six months have elapsed from the end of the present emergency.

(3) Any notice to be given under the last preceding subsection by the former employer to the applicant shall, without prejudice to any other mode for the giving thereof, be deemed to have been duly given if it is sent to the applicant addressed to him at such address as may be provided by him for the purpose or, if no such address is so provided, at his last known place of abode.

2. Mode of making, time for making and duration of applications for reinstatement.—(1) An application under the preceding section—

(*a*) shall be of no effect unless it is made in writing;

(*b*) may be made either by the applicant or by some person acting with his authority.

(2) An application under the said section shall be of no effect unless it is made during the period beginning with the end of the applicant's war service and ending with the fifth Monday after the end thereof:

Provided that an application made after the end of the said period shall not be invalid by virtue of this subsection if the applicant was prevented from making it within that period by his sickness or other reasonable cause, and the application was made as soon as reasonably may be after the expiration of the said period.

(3) An application under the said section shall cease to have effect on the expiration of thirteen weeks from the date of the making thereof:

Provided that—

(*a*) while the application is still in force it may from time to time be renewed in writing by the applicant or by some person acting with his authority, and, if it is so renewed, shall not cease to have effect by virtue of this subsection until thirteen weeks from the date of the renewal; and

(*b*) if, at the time when the application would otherwise cease to have effect, proceedings for the determination of any question affecting the application are pending under the subsequent provisions of this Act, the application shall not cease to have effect by virtue of this subsection until fourteen days after those proceedings have ceased to be pending; and for the purposes of this proviso, proceedings shall not be treated as having ceased to be pending until the time for appealing has expired or, where an appeal is brought, until the appeal is decided or withdrawn.

(4) An application under the said section or any renewal of any such application may be made either directly to the former employer or, in the prescribed manner, at an employment exchange or any such other local office of the Minister or of the Ministry of Labour for Northern Ireland as may be appointed by the Minister or Ministry, as the case may be, and where any application or renewal is so made or given at such an exchange or local office, it shall be the duty of the Minister to take such steps as may be practicable to forward it to the former employer.

3. Duty of applicant to state date of availability for employment.—(1) Where an application is made under section one of this Act, the applicant or some person acting with his authority shall, at or after the time of making the application, but not later than four weeks from the latest date allowed

by the last preceding section for the making thereof, notify to the former employer in writing a date, not later than the expiration of the said four weeks, on which the applicant will be available for employment :

Provided that if, owing to his sickness or other reasonable cause, the applicant is not available for employment until after the expiration of the said four weeks, the date to be so notified may be a date as soon as reasonably may be after the expiration of the said four weeks, and accordingly the notification shall not be invalid by reason only that it is given after the expiration of the said four weeks.

(2) The provisions of subsection (4) of the last preceding section shall apply to any notification under this section as they apply to applications under section one of this Act.

4. Obligation of employers to continue to employ reinstated employees.— (1) Where an applicant has been taken into the employment of his former employer in pursuance of section one of this Act, the former employer shall be under the obligation to employ the applicant for the following twenty-six weeks or so much thereof as is reasonable and practicable—

(*a*) in an occupation not less favourable to him than that in which, and on terms and conditions not less favourable to him than those on which, the applicant is so taken into employment ; or

(*b*) if, at any time during the period for which he has under this section to be employed, it ceases to be reasonable and practicable for the applicant to be employed in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are thereafter for the time being reasonable and practicable in his case :

Provided that, if when the applicant last ceased to be employed by his former employer before the beginning of his war service he had been in the continuous employment of that former employer for a consecutive period of not less than fifty-two weeks, the preceding provisions of this section shall have effect as if for the reference to twenty-six weeks there were substituted a reference of fifty-two weeks.

(2) In computing the period of continuous employment mentioned in the proviso to the preceding subsection—

(*a*) where the employment is in an undertaking, and any change has taken place in the person carrying on that undertaking or any other undertaking has become comprised in that undertaking, periods in the employment of the person for the time being carrying on the undertaking or the other undertaking, as the case may be, shall be treated as periods of employment by the former employer ;

(*b*) a person shall not be treated as otherwise than continuously employed by reason of any temporary absence from work.

Disabled Persons (Employment) Act, 1944.

[Section 41]

Section 2. (*Vocational training courses.*)

(1) The Minister of Labour and National Service may with the approval of the Treasury provide, or make arrangements for the provision by other persons of, facilities (in this Act referred to as " vocational training courses ") for the training of disabled persons, not being under the age of sixteen years, who are in need of training in order to render them competent to

undertake employment, or work on their own account, of a kind suited to their age, experience and general qualifications.

(2) The Minister may make arrangements with any other government department for the exercise by that department of any of the powers conferred on him by this section.

(3) Where the Minister or any other government department makes arrangements under this section for the provision of a vocational training course by other persons, the Minister or that department may defray or contribute towards the cost incurred by those persons of the provision of the facilities.

Section 3. (*Refers to industrial rehabilitation courses.*)

Section 4. (*Payments to persons attending courses.*)

The Minister, or, in the case of a course provided by, or under arrangements made by another government department, may defray, or contribute towards, expenses incurred by persons attending vocational training courses or industrial rehabilitation courses in travelling to and from the place where the course is held, and may make payments to or in respect of such persons up to such amounts as the Minister or that department may with the approval of the Treasury determine and in such manner as the Minister or that department may determine.

N.B.—A "disabled person" means a person who, on account of injury, disease, or congenital deformity is substantially handicapped in obtaining or keeping employment, or in undertaking work on his own account, of a kind which apart from that injury, disease or deformity would be suited to his age, experience and qualifications.

"Disease" shall be construed as including a physical or mental condition arising from imperfect development of any organ. (Section I.)

APPENDIX B.

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PRINCIPLES OF GOVERNMENT IN MAINTAINED SECONDARY SCHOOLS

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I. INTRODUCTION

1. Under Section 17 of the Education Act every county and voluntary secondary school is to have an instrument of governing 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 is 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 is regulated by a scheme made under the Endowed Schools or Charitable Trusts Acts, and all secondary schools are 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 were 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. 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.

4. Another important change is the classification of schools into categories of county, controlled, special agreement and aided schools. 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.

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.* 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

* 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.

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; 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 I of the Act 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 is consequently most necessary.

II. GOVERNING BODIES

10. *Constitution.*—All secondary schools are to be governed by governing bodies specially constituted for the purpose. 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; 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.

11. *Composition.*—In all schools it may be assumed that the governing body will include :—

(i) Adequate representation of the local education authority ;*
(ii) other persons whose qualifications are such as to enable them to play a useful part in the government of a secondary school.

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.†

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 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. Usually, however, there will be solid advantages 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 authority's representatives will not necessarily be in all cases members of the authority.

† One section holds that governors should be specially nominated by the teaching staff and by parents' and old scholars' associations.

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 Bill the appointment of teachers in county controlled or special agreement schools is, with certain reservations, placed under the control of the local education authority. In a controlled school the authority are obliged before making an appointment of head teacher, to inform the governors as to the person proposed to be appointed and to consider any representations made by them. The dismissal of teachers rests with the local education authority. 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.

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 then 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 cause ;

(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. It would be usual 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 ; in aided schools it is to be made by the governors, with the consent of the authority where so provided. 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. 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. 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 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 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 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 will call for a 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 procedure, 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 had 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 boarders, 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 question 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.

APPENDIX C

LOCAL ADMINISTRATION OF EDUCATION SCHEMES OF DIVISIONAL ADMINISTRATION

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Appendix. Communications with the Ministry

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CIRCULAR 5.
15th September, 1944.

MINISTRY OF EDUCATION,
Belgrave Square,
LONDON, S.W.1.

All communications should be addressed to "THE SECRETARY."

LOCAL ADMINISTRATION OF EDUCATION SCHEMES OF DIVISIONAL ADMINISTRATION

I. INTRODUCTION

1. Section 6 and Part III of the First Schedule to the Education Act, 1944, provide for the setting up of a new machinery for the local administration of the public system of education in county areas. The object of these provisions is to secure that while, within the framework of national policy, the education service in county areas shall be administered under the general control and supervision of the local education authority, it shall not lose the inspiration to be derived from more immediate local interest and local initiative.

2. The functions of local education authorities which may be delegated to divisional executives by schemes of divisional administration are those relating to primary and secondary education. The extension of schemes of divisional administration to cover functions relating to further education is permissible at the discretion of the Minister on the application of the local education authority or of the council of an excepted district.

3. The adjustments that will be necessary to establish a satisfactory scheme of divisional administration will call for a large measure of good will. The Minister is confident 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 new Education Act provides.

4. As was made clear in the course of debate during the passage of the Bill, it would be neither desirable nor practicable to attempt to lay down any hard and fast model scheme to which authorities should be expected to conform. Such uniformity would be irreconcilable with the wide differences in the circumstances and requirements of different areas.

5. At the same time the Minister believes that a statement of general principles and some guidance as to the considerations to which regard should be had in framing schemes of divisional administration will be welcomed both by county local education authorities and by the councils of excepted districts who under paragraph 5* will be responsible for drawing up their own schemes.

6. Under Part III of the First Schedule schemes of divisional administration will need to be prepared by county local education authorities (except where the local education authority for a county is a joint education board), by joint education boards and by the councils of excepted districts. It is

* Unless otherwise indicated, references to paragraphs are references to paragraphs of Part III of the First Schedule to the Education Act, 1944.

not yet known in every case for which areas joint education boards will be established nor which districts will be excepted. In the meantime copies of this memorandum are being sent to all county local education authorities and to the London County Council and the councils of county boroughs, boroughs and urban districts for information. The memorandum relates primarily to schemes of divisional administration prepared by county local education authorities and joint education boards, but the general principles which it enunciates should be borne in mind by the councils of excepted districts when they prepare their schemes.

II. ESTABLISHMENT OF DIVISIONAL EXECUTIVES

Partitioning of local education authorities' areas

7. The Schedule does not contemplate that every county area must necessarily have a scheme of divisional administration (see proviso to paragraph 2). Any partitioning of the area may be inappropriate where the total population of the county is small or thinly spread. It will be for the Minister to consider, on the application of the local education authority or otherwise, whether the circumstances of an area are such as to render a scheme unnecessary and to make the requisite order.

8. Nor is it contemplated that where divisional executives are established they need necessarily cover the whole county. Only in those divisions specified for the purpose in the scheme will divisional executives be constituted, the remainder of the area being administered directly by the local education authority.

Selection of divisional areas

9. The areas selected for the establishment of divisional executives must have a sufficient population to constitute a reasonable educational unit for the purposes of primary and secondary education. They should also possess sufficient community of interest, or should offer prospects of developing before long such community of interest, and they should possess some conveniently accessible administrative centre within the area or adjacent to it. On the other hand, the area of a divisional executive should not be so large as to prejudice the possibility of securing the values that the scheme is designed to secure—the bringing to bear on local administration of local knowledge and interest. While the population criterion of 60,000 which entitles a borough or urban district to be an excepted district is not necessarily appropriate in determining what is a suitable minimum population for a divisional executive, any area with a population substantially lower than this figure—though there may be cases where geographical considerations justify special treatment—will not usually constitute a satisfactory educational unit, particularly for secondary education.

Excepted districts and larger units

10. Cases will arise where a borough or an urban district which, under the provisions of sub-paragraphs (*a*) or (*b*) of paragraph 4, has a prescriptive right to be an excepted district, may elect, in order to secure a better unit of administration, to forgo its right and to be combined with adjoining districts to form a divisional executive for a wider area.

11. The effect of this would be that the borough or urban district would relinquish its right to draw up its own scheme of delegation in respect of primary and secondary education, which might be varied subsequently on its application, or to apply for the delegation of further education functions.

Moreover, membership of the executive would not be confined to members of the borough or urban district council.

12. Where a borough or urban district is willing in the larger interest to forgo these rights, it would clearly be proper that its interests should be safeguarded. This might be secured by agreement that the scheme of delegation should be drawn up by the borough or urban district council and the local education authority in consultation, and that at the same time it should be agreed what proposals, if any, for the delegation of further education functions should be submitted for the Minister's approval. The local education authority might undertake to consider, if occasion arose, an application from the borough or urban district council for the variation of the scheme, and to assure to the council representation on the executive appropriate to its position.

III. THE CONSTITUTION OF DIVISIONAL EXECUTIVES

Composition of divisional executives

13. In excepted districts the borough or urban district council will be the divisional executive. 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.

14. In all other cases the divisional executives will have to be specially constituted under the scheme (paragraph 8 (*a*)), and it is suggested that they should consist of :—

(*a*) representatives of the local education authority ;

(*b*) persons nominated by the county district councils (or combinations of such councils) whose districts are situated wholly or partly within the divisional area ;

(*c*) other persons of experience in education and persons acquainted with the needs of the divisional area including, where appropriate, representatives of local industry and agriculture.

The importance of including women on divisional executives needs no emphasis.

15. As one of the objects of establishing divisional executives is to secure that due regard is had to local circumstances and to make full use of local knowledge, it would be appropriate that the members nominated by the county district councils should be in a majority.

16. The number of persons to be nominated by the several county district councils (or combinations of such councils) might most suitably be determined on a population basis.

The size of executives

17. The size of executives will necessarily vary according to circumstances, but it is suggested that, if they are not to be unwieldy bodies, their membership should ordinarily number between 20 and 30.

Members' term of office and other points of detail

18. There are various matters of detail connected with the constitution of the executives for which it will be necessary to make provision in the scheme, such as the election of a chairman and vice-chairman, the term of office and retirement of members, resignation, vacation of office by failure to attend meetings and the filling of casual vacancies. It is unnecessary to

discuss these points in detail in this memorandum since the relevant provisions of the Local Government Act, 1933, afford ample guidance for dealing with them.

Disqualifications for office

19. There is another provision in the Local Government Act, 1933, to which attention may be called. Section 59 deals with disqualifications for office as members of a local authority, and provision on the lines of that section should be made in every scheme of divisional administration.

The position of employees of local authorities

20. It may be noted here that any employee of a local authority, including a teacher, is eligible for appointment to a divisional executive by the local education authority or a county district council or other body with the right to nominate members, save that where a borough or urban district council is the executive, membership of the executive is necessarily confined to persons elected to the council.

IV. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

21. Where the executive is a borough or urban district council, it should appoint a committee consisting both of members of the council and of persons co-opted for their experience in education and knowledge of local conditions to advise the executive on the discharge of its functions. The desirability of including on the committee some representative members of the local education authority should be borne in mind. There is no need for such a committee where the divisional executive is itself a specially constituted body.

22. Otherwise divisional executives generally might be empowered to appoint such committees and sub-committees as they think fit.

V. THE PROCEEDINGS OF DIVISIONAL EXECUTIVES

23. It will be necessary to make provision in schemes of divisional administration with regard to the meetings and proceedings of executives. Here again it will be found that many of the provisions of the Local Government Act, 1933, e.g., Section 75 and the Third Schedule, can be suitably adapted for the purpose either by incorporation in the scheme or by reference. The following are some of the more important subjects to be considered in this connection :—

Meetings

(1) Provision should be made for annual and other meetings, and it will facilitate administration generally if the meetings of divisional executives are so arranged as to fit in with the series of committee meetings which normally precede the meeting of the local education authority.

Election of chairman and vice-chairman

(2) The chairman and vice-chairman should be elected at the annual meeting.

Standing orders

(3) Subject to the provisions of the scheme, divisional executives should be empowered to make standing orders for the regulation of their

proceedings and business. There should be a specific power for the chairman or a specified number of members to call or request a meeting of the executive at any time.

Interest in contracts

(4) The provisions of Section 76 of the Local Government Act, 1933, relating to the disability of members of authorities for voting on account of interest in contracts, should be applied to the members of every divisional executive.

Minutes

(5) Every executive should be required to keep minutes of its proceedings and of any committee or sub-committee, and these minutes should be available for inspection by the local education authority, who should be supplied with such number of copies as they may require.

Under paragraph 13, the minutes of the proceedings of a divisional executive are required to be open to the inspection of any local government elector for the area of the local education authority on payment of a fee of not more than 1s. and any such local government elector is entitled to make a copy thereof or an extract therefrom. Similar provision should be made with regard to the minutes of the proceedings of any committee set up in accordance with the recommendations made in paragraph 21 of this Memorandum.

Admission of the Press

(6) The Local Authorities (Admission of the Press to Meetings) Act, 1908, does not apply to divisional executives, but the proceedings of the executives will be of close concern to the public. For that reason, and in order also to stimulate a proper interest in educational affairs generally, it is suggested that provision should be made in the schemes whereby the Press are admitted to meetings of divisional executives and of the committees referred to in paragraph 21 of this Memorandum except when, in view of the special nature of the business to be dealt with, they are excluded by specific resolution.

VI. DIVISION OF FUNCTIONS BETWEEN LOCAL EDUCATION AUTHORITY AND DIVISIONAL EXECUTIVES

Functions of the local education authority

24. The essence of every scheme of divisional administration is to define the functions of divisional executives and their relationship to the local education authority. Certain duties and powers are reserved by statute to managers and governors, and others may be delegated to them under rules of management or articles of government varying with the type of school concerned. Some considerations affecting the drawing up of instruments and articles of government for secondary schools have been set out in the White Paper published last May (Command 6523). At the other end of the scale certain powers and duties must always remain with the local education authority, e.g., the power to borrow money or to raise a rate and, therefore, by implication, the ultimate approval of expenditure, the responsibility for the development plan for the area as a whole, and, generally, the responsibility for formulating the educational policy of the area within the national framework. The authority cannot divest itself of its statutory responsibility for finance, or for ensuring that an adequate standard of educational provision is maintained throughout its area.

25. It follows from this that, while some degree of delegation, no doubt varying in different cases, may be found appropriate for dealing with proposals for new schools or major alterations to school accommodation, the local education authority must retain the ultimate right to approve such proposals and to secure, in co-operation with the divisional executive, that the educational provision of the district is in accord with the authority's general policy.

26. Further, there will be a number of matters, e.g., arrangements for conveyance, or arrangements for school meals, which may appropriately be delegated but with regard to which it may be necessary for the authority to issue regulations in order to secure a reasonable uniformity of practice throughout their area. Such regulations will, of course, be of a general character.

Instruments of management and government

27. Instruments of management and government for county primary and secondary schools should be made by the local education authority in consultation with the divisional executives, having regard to the considerations indicated in paragraph 61 of this Memorandum. Model rules of management and articles of government for all such schools in the area should be prepared by the local education authority, though before settling them they should consult with representatives of the county districts and other interests concerned.

Functions of divisional executives

28. It is within the considerable field of administration which remains after these reservations have been made that the decision must be taken as to the degree of delegation to divisional executives that may be desirable. The nature and extent of the functions to be delegated to the executives, whether in different counties or in one and the same county, will naturally vary according to local circumstances.

These functions will broadly be of two kinds, executive and advisory. A divisional executive differs from a district committee in that on many matters its decisions will not be subject to confirmation by the local education authority.

29. Subject to the foregoing observations and also to the rights of managers and governors as indicated in the following sub-paragraphs, it is suggested that the following functions relating to primary and secondary education might appropriately be delegated to divisional executives. (The appointment and dismissal of administrative, professional, technical and teaching staffs are dealt with later.)

(1) *Assessment and review of educational needs of the divisional area*

To survey the existing provision and to assess the immediate and prospective needs of the divisional area and to submit proposals for meeting those needs for the consideration of the authority. Thereafter, to keep the needs of the area under review and to take such action in connection therewith as may be appropriate. In particular, to establish administrative machinery to ensure that the planning and housing authorities for the divisional area are consulted from the earliest stages on proposals for educational developments and that these authorities similarly consult the divisional executive from the earliest stages in connection with proposals for housing, industrial and similar developments.

To advise the local education authority in regard to the provision of new schools, extensions and improvements to schools, and discontinuance of schools in the divisional area.

(2) *The care and use of school premises*

To arrange for repairs and re-decorations to school premises (except where this is a matter for managers or governors) within the annual estimates approved by the authority, subject to any limits on particular items as may be agreed.

To deal with the letting of schools, subject to any general regulations made by the authority.

(3) *School supplies*

To deal with requisitions for supplies to schools under arrangements agreed with the authority.

(4) *The work of the schools*

To consider reports of His Majesty's inspectors and of inspectors of the local education authority and to take such action as may be appropriate.

To co-ordinate in consultation with governing bodies the various types of secondary education and to secure an effective distribution of facilities for advanced work.

To make arrangements for the secular instruction of pupils elsewhere than on the school premises, e.g., visits to swimming baths, parks and museums.

(5) *School attendance*

To enforce the provisions of the Education Act, 1944, regarding school attendance and the employment of children and young persons (Section 59) and to institute legal proceedings in connection therewith, after any necessary consultation with the authority.

To secure an effective distribution of facilities for primary education and, where necessary, to delimit catchment areas for particular schools.

Subject to the provisions of any rules of management or articles of government, and to any general regulations made by the authority, to fix the school holidays in the divisional area and to authorise occasional closures.

To deal with the cases of children suspended by managers or governors from attendance at school for misconduct, to arrange interviews with parents and, if necessary, the transfer of the pupils to other schools.

Subject to any general directions by the authority and to the functions of managers and governors, to arrange for the admission and transfer of pupils.

Subject to any general regulations made by the authority, to arrange for the transport of pupils to and from school.

(6) *Welfare of Pupils*

To discharge such duties and responsibilities relating to medical inspection and treatment as may be assigned under the local education authority's arrangements.

Subject to any general regulations made by the local education authority, to administer on behalf of the local education authority the arrangements for the supply of school meals and milk.

To arrange, where necessary, for the supply of clothing and footwear for children attending school and for the recovery of the cost, in whole

or part, from those parents who can afford to pay, within the general regulations of the authority.

To award allowances for travelling, maintenance, etc., in accordance with scales laid down by the authority, and to make recommendations to the authority in respect of allowances in excess of the approved scales.

To report to the authority all cases of handicapped children coming to its notice and to fix and collect, in accordance with the general regulations of the authority, parents' contributions towards the expenses of making provision for such children in residential special schools or boarding them out.

VII. FUNCTIONS UNDER OTHER ACTS

30. It would not be legitimate to include in a scheme made under the Education Act, 1944, provision for the delegation of functions conferred upon Local Education Authorities by other Acts such as the Children and Young Persons Act, 1933, and the Unemployment Insurance Act, 1935.

VIII. ADMINISTRATIVE CO-OPERATION

31. Whatever the division of functions between the local education authority and divisional executives, the success of the new arrangements will depend upon the co-operation between the two bodies. Such co-operation will be fostered, it is suggested, by providing ample opportunities for friendly and thorough consultation before decisions are taken. There are many matters within the province of either the authority or the divisional executive on which the views of the other body would be of value, and without arrangements for the exchange of such views there can be neither proper co-ordination of the educational provision in the different divisional areas on the one hand nor, on the other, due consideration of local variations by the local education authority.

32. Accordingly it is suggested that :—

(*a*) the divisional executive should have the right to make representations and recommendations to the local education authority with regard to any matter not delegated to it but affecting the education and welfare of pupils in its area ;

(*b*) the divisional executive should have the duty of considering inquiries, representations and recommendations, made to it by the local education authority with regard to any function, whether delegated to it or not, and to furnish the local education authority with such statistics and records in connection with the administration of the functions delegated to the executive as the local education authority may require.

33. It is of vital importance that the fullest contact should be maintained between the chief education officer and the divisional education officer in order to promote the co-ordination of educational provision in all the divisional areas of the county. The divisional executive should be enabled to obtain, through the chief education officer, the advice of all departments of the county council upon any matter within the functions of the divisional executive upon which such advice is sought. The executive should also be enabled, as need arises, to obtain the services of expert staff under the direct control of the local education authority.

IX. APPOINTMENT AND DISMISSAL OF STAFF

(i) Administrative and Other Non-teaching Staff

(A) General considerations

34. The staff of the divisional executive will be legally in the employment of the local education authority. Further, it would be unfortunate if the establishment of a system of divisional administration led to the creation of a number of units with their own isolated, independent and self-contained staffs. On the contrary, it is clearly desirable, both in the interests of the staffs themselves and of the education service generally, that there should be opportunities of promotion and transfer to the service either of other divisional executives in the local education authority's area or of the local education authority itself and vice versa. There will also be a number of matters under the direct control of the authority on which they would reasonably wish to utilise the services of the divisional education officer and his staff.

35. For all these reasons it will be necessary for the local education authority to exercise some measure of control over the movement of staff and the filling of vacancies. This need not, however, be inconsistent with the control by the executive of the staff working for it.

(B) The Divisional Education Officer

36. Every divisional executive should have the services of a suitable education officer, though in appropriate cases such services might be combined with other duties or, in some cases, with service for another divisional executive. A special degree of importance attaches to the post of divisional education officer, since it is upon his tact and good sense, no less than upon his ability and efficiency, that the success of the new system will depend to an appreciable degree. His immediate obligations will be to the divisional executive, but he will also discharge certain duties for the local education authority in respect of matters coming under their direct control.

37. It follows from this, and from what has been said in paragraph 34 of this memorandum, that the local education authority as well as the divisional executive should be jointly associated in the appointment of the divisional education officer. This could be secured in various ways. Thus, following the analogy of Section 88 of the Education Act, 1944, the appointment might be made by the divisional executive from a short list submitted to and approved by the local education authority. Alternatively, the appointment might be made on the recommendation of a joint committee of the divisional executive and the authority.

38. The qualifications, salaries and terms of office of divisional education officers should be settled by the local education authority after consultation with the divisional executive.

39. In view of the importance of the post, the dismissal of a divisional education officer must rest with the local education authority, no doubt after consultation with the divisional executive, but a divisional executive should have the right to recommend his dismissal.

40. The functions of the divisional education officer should include the following :—

(i) to act as the chief executive officer and clerk of the divisional executive and generally to give it such advice as it may require ;

(ii) to carry out the instructions of the divisional executive on matters which lie within its delegated or referred responsibilities ;

(iii) to carry out on behalf of the local education authority such duties as may be arranged on any matters coming under their direct control ;

(iv) to prepare and submit such information and returns as the local education authority may require ;

(v) to summon and prepare agenda for the meetings of the divisional executive, its committees and sub-committees and send copies thereof to the chief education officer at the same time as they are sent to members of the divisional executive ;

(vi) to prepare the minutes of the meetings of the divisional executive, its committees and sub-committees and send copies thereof to the chief education officer ;

(vii) to act, where so required, as the clerk to the managers or governors of any maintained school in the divisional area.

(*C*) *School, medical, dental and nursing staff*

41. The county school medical officer will be appointed by the local education authority, and the officer holding this appointment should, as is now the case, also be the medical officer of health employed by the county council as public health authority. As the school medical officer will be responsible to the authority for all matters pertaining to the health and physical well-being of children and young persons attending educational institutions maintained by the authority, it is essential that the medical, dental and nursing staff employed throughout the county should be under his general control. At the same time, the divisional executive, in the exercise of its delegated powers, will be concerned in these matters within its own area. It follows from this that both the local education authority and the divisional executive should be associated in the appointment of any assistant county medical officers, school dentists and nurses, who may be appointed for service in the area of the executive. It will, no doubt, be considered desirable that the medical officers of health and the other medical, dental, and nursing staff employed by the county districts should be appointed to the county staff for school medical service purposes.

42. The dismissal of school medical, dental and nursing staff will rest with the local education authority.

(*D*) *Other Administrative Staff*

43. Subject to the observations in paragraph 34 of this memorandum and also to the establishment and the conditions and terms of service being approved by the authority, the appointment and dismissal of staff might be delegated to the divisional executive, with a right of appeal to the local education authority against dismissal.

(*E*) *Staff other than Administrative*

44. Similarly, with the same safeguards, the divisional executive might well appoint and dismiss, and supervise and direct the duties of school attendance and inquiry officers and also of school secretaries and clerical assistants employed in schools, school keepers, cleaners, canteen staffs, groundsmen and the like, in so far as the appointment and supervision of such staff is not a matter for managers or governors.

(ii) TEACHING STAFF

The statutory position

45. In view of their importance the appointment and dismissal of teachers

require to be dealt with in some detail and it may be convenient at the outset to set out the statutory position.

46. The appointment of teachers in county, controlled and special agreement schools is, with certain reservations in the case of the last two, placed under the control of the local education authority. The rules of management or articles of government may provide for the power of appointment to be delegated to the managers or governors; the dismissal of teachers in all three types of school rests with the local education authority.

47. In controlled schools the authority are obliged, before making an appointment of head master or head mistress, to inform the managers or governors as to the person proposed to be appointed and to consider any representations made by them. The authority must also consult the foundation managers or foundation governors with regard to the appointment in controlled or special agreement schools of reserved teachers to give the denominational religious instruction, and the foundation managers or foundation governors have the right to satisfy themselves as to their fitness and competence for this purpose and to require the local education authority to dismiss reserved teachers for failing to give the denominational religious instruction efficiently and suitably.

48. In aided schools, where the respective functions of the authority and the managers or governors in regard to the appointment and dismissal of teachers are to be regulated by rules of management or articles of government, the appointment of teachers rests with the managers or governors; the number of teachers to be employed must be determined by the authority. The authority also have the right, except on grounds connected with the giving of denominational religious instruction, to prohibit the dismissal of a teacher without their consent or to require the dismissal of a teacher. Teachers appointed to give denominational religious instruction in an aided school may be dismissed by the managers or governors without the consent of the local education authority if they fail to give such instruction efficiently and suitably.

Certain questions are left in the case of aided schools to be settled by agreement between the local education authority and the managers or governors or, failing such agreement, to be determined by the Minister, namely :—

(i) whether the appointment of teachers of secular instruction should be subject to the consent of the authority;

(ii) whether the authority are to give directions as to the educational qualifications of teachers of secular instruction.

Other general considerations

49. Apart from the statutory requirements, there are certain other considerations which should be borne in mind. In the first place, all appointments, except those in aided schools, must be made to the service of the local education authority and the authority must, therefore, be in a position to prescribe the conditions of service. Further, the authority must be in a position to determine the staffing establishment appropriate to the needs of the divisional area in consultation with the divisional executive and, where necessary, with managers or governors. In the second place, the observations in paragraph 34 of this memorandum about the need for wider opportunities for promotion and transfer for administrative staff apply with even greater force to the teaching staff. It is eminently desirable that the teachers in a local education authority's area should, so far

as possible, be regarded as one body to be used, where circumstances allow, as may best serve the requirements of the area as a whole. In particular, the authority should be able to effect the transfer of redundant teachers from one divisional area to another and should be in a position to facilitate, in co-operation with managers and governors, the transfer of teachers so as to use their qualifications to the best advantage and widen their experience by service in different parts of the area. In this way, something effective might be done to overcome the difficulties which at present tend to render teachers immobile. Finally, the local education authorities may have duties imposed upon them under Section 62 of the Act in connection with the training of teachers, a function which they must retain in their own hands. They will, therefore, have a special responsibility towards new entrants to the profession, and should be able, with the co-operation of divisional executives, to secure their appropriate placing.

50. In the light of these considerations and having regard to the suggestions made in the White Paper on the Principles of Government in Maintained Secondary Schools, it is suggested that the appointment and dismissal of teachers should be dealt with on the following lines.

Appointment of Teachers

(1) *County and voluntary schools—primary*

(*a*) *Assistant masters and assistant mistresses*

51. In the case of county and controlled schools, notice of a vacancy requiring to be filled should be sent by the managers to the divisional executive, who, if it does not propose that the vacancy should be filled by transferring a teacher from another school in the divisional area, will notify the local education authority. The authority will consider whether there is any teacher in their employ elsewhere who might suitably be transferred and, if there is not, will advertise the vacancy or request the divisional executive to do so. Applications for the vacancy should be sent to the divisional executive, whether through the authority or otherwise, who would make the appointment in consultation with the managers and the head master or head mistress. In the case of reserved teachers the foundation managers have the right to withhold consent to the proposed appointment on religious grounds.

52. In aided schools the appointment will be made by the managers subject to confirmation by the Local Education Authority if, as is contemplated will normally be the case, the rules of management provide for such confirmation. The same procedure for the notification of vacancies and their advertisement where necessary might be followed as in the case of county and controlled schools, but confirmation of the appointment should be delegated to the divisional executive, subject to the local education authority being consulted in any case where it is proposed to withhold confirmation.

(*b*) *Head masters and head mistresses*

53. In county and controlled schools the vacancy should be notified by the managers through the divisional executive to the local education authority who should, where necessary, advertise the post and send the applications to the managers through the divisional executive. A short list should be drawn up and the candidates interviewed by the managers at

meetings attended by one or more representatives of the divisional executive, and a recommendation submitted to the authority through the divisional executive, who might add its observations, as to the candidate it is proposed should be appointed.

54. A similar procedure might be adopted in the case of aided schools because, though the power of appointment rests with the managers, the authority and the divisional executive are concerned in the appointment, particularly if, as is contemplated will normally be the case, the rules of management provide for confirmation by the authority. It is accordingly desirable—and will avoid possible difficulties later—that the authority and the divisional executive should be associated in the selection at as early a stage as possible.

(2) *County and voluntary schools—secondary*

(*a*) *Assistant masters and assistant mistresses*

55. Under the recommendations made in the White Paper, the usual practice in all types of school will be for the appointment 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. As in the case of primary schools, vacancies should generally be notified in the first instance to the local education authority through the divisional executive, before any advertisement is issued. Confirmation of the appointment should be delegated to the divisional executive, subject to the local education auth ority being consulted in any case where it is proposed to withhold confirmation.

(*b*) *Head masters and head mistresses*

56. In the case of county, controlled and special agreement schools, it is suggested that one or other of the following methods should be adopted.

(i) Applications might be considered by the governors at a meeting attended by a representative of the divisional executive and by a representative of the authority and a short list of three names drawn up. The final selection for appointment might be made by a joint committee of the divisional executive and the local education authority under the chairmanship of a nominee of the local education authority; a member of the governing body should be present at the meeting.

(ii) A joint committee might be set up composed as to one-half of members of the governing body and as to the other consisting of representatives of the divisional executive and the local education authority, under the chairmanship of a person nominated by the local education authority, to draw up the short list and, at a second meeting, to make the final selection for appointment.

Either method might be adopted with modifications in the case of aided schools. If, as would be more usual, a joint committee were set up, the proportion of members on the joint committee would no doubt be varied, and the nomination of chairman given to the governors at one or both stages of the appointment.

The Dismissal of Teachers

County and voluntary schools—primary and secondary

57. Any proposal to dismiss a teacher should be considered in the first instance by the managers or governors, in the case of head masters or head

mistresses at two meetings held at intervals of not less than 14 days. In all cases the teacher should have the right to appear before the managers or governors accompanied by a friend and, in the event of a resolution to dismiss him being passed, to appeal to the local education authority who should consult the divisional executive before reaching a decision.

58. No dismissal should take effect in the case of teachers in county, controlled and special agreement schools until it has been submitted through the divisional executive to the local education authority for confirmation or, in the case of aided schools, for the consent of the authority, except where the teacher is being dismissed for failing to give the denominational religious instruction efficiently and suitably.

59. While dismissals would ordinarily be recommended by the managers or governors, the authority should retain the power to dismiss, either on their own motion or on the recommendation of the divisional executive, in the case of county, controlled and special agreement schools and to require dismissal in aided schools.

Appointment and Dismissal of Teachers in Day Special Schools and Nursery Schools Maintained by Local Education Authorities

60. While the appointment and dismissal of teachers in day special schools and nursery schools are not subject to statutory requirements nor regulated by rules of management or articles of government, the general considerations referred to in the foregoing paragraphs apply to these schools also. The teachers will be appointed to the service of the local education authority, who will prescribe the conditions of employment; but it is suggested that the divisional executives, the managers, if any, and the head master or head mistress or superintendent should have a voice in their selection. The precise methods to be adopted would be settled by agreement between the authority and the divisional executive. The dismissal of teachers in day special schools and nursery schools should rest with the local education authority.

X. APPOINTMENT OF MANAGERS AND GOVERNORS

61. 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.

(Where a borough or urban district council is the executive it will in any case be responsible, either solely or jointly with other bodies, for the appointment of those managers of county and voluntary primary schools whose appointment, under the Act, rests with the minor authority.)

XI. FURTHER EDUCATION

62. Provision is made in paragraph 9 whereby, on the application of a local education authority or of the council of an excepted district, functions relating to further education may be delegated to a divisional executive. The Minister has to be satisfied, after consultation with the local education authority where the application is made by the council of an excepted district, that such a course would be expedient and in general, it may be assumed—though there may be exceptions—that the delegation of an authority's responsibilities in respect of major technical and similar institutions will not be appropriate in view of the wide area and varied interests normally served by such institutions. On the other hand, it may well

be both possible and desirable in a number of cases to delegate to divisional executives appropriate functions relating to further education, for example in respect of youth service, local evening institutes and, when they come into being, county colleges.

XII. FINANCE

63. Subject to the over-riding consideration that ultimate financial responsibility must rest with the local education authority, to whom the power to borrow money or to raise a rate is specifically reserved, schemes may provide for the delegation of financial responsibility in varying degrees.

64. It should be made clear that paragraph 8 (*g*) does not imply that in all cases the actual disbursement of money in respect of divisional services must necessarily be delegated to divisional executives. The paragraph in question applies only to those cases where such delegation is actually made. Such delegation may be considered appropriate more particularly in the case of divisional executives which are excepted districts.

65. Where a scheme provides for a divisional executive to undertake the disbursement of money on behalf of the local education authority, it will be the duty of the divisional executive under paragraph 8 (*g*) to keep accounts of money so disbursed and to submit the accounts to the local education authority. The accounts so rendered will be incorporated in the education account of the authority and for this reason it will obviously be desirable that the financial arrangements of the divisional executive should readily conform to those of the authority. Where the delegation of disbursement is not proposed in the scheme the local education authority will remain directly responsible for the making of payments and the keeping of accounts.

66. Whichever arrangement may be adopted in any particular case, the scheme should provide for the submission of estimates to the local education authority by divisional executives, by such date as may be prescribed, of the cost of administering their delegated functions within the divisional area for the ensuing year. When such estimates have been approved, the divisional executive should have power to incur expenditure within the several limits of the amounts determined under each main head of the approved estimate. Provision should also be made for the submission and approval, as may be necessary, of supplementary estimates.

67. Where the divisional executive is not made responsible for the actual disbursement of money from sums placed at its disposal by the local education authority, it may nevertheless be found convenient in some instances that the divisional executive should assist the authority in the placing of orders and should certify certain of the accounts ; and it might also be authorised to undertake the collection of small cash payments due to the authority.

68. Where the divisional executive is responsible for the estimates but is not directly responsible for making payments, it may still be necessary for it to keep some form of running account and for the local education authority to furnish the executive with periodic returns of receipts and payments so that it may be kept informed how expenditure under the approved estimates is going.

XIII. DETERMINATION OF DISPUTES

69. Under paragraph 8(*f*) every scheme has to provide for the determination by the Minister of any disputes between the local education authority and divisional executive. Either party should have the right to refer the dispute to the Minister, whose decision will be final.

XIV. PUBLICATION OF SCHEMES

70. Draft Statutory Rules and Orders relating to the notices to be issued about schemes of divisional administration are in course of preparation.

M. G. HOLMES.

APPENDIX

Communications with the Ministry

There is one matter which is cognate to the delegation of functions to divisional executives which calls for consideration, viz., the question of the access of divisional executives to the Ministry. This is a matter which must be determined by the Minister since it affects the administration of his Department.

In general, the Minister takes the view that correspondence must be conducted between the Ministry and the Local Education Authority as the body statutoyily responsible for the provision and conduct of education in their area. To this general rule the Minister will allow one exception. In the case of an excepted district, or of a divisional executive which includes a borough or urban district which has waived its right to be an excepted district, the Minister would be prepared, on the application of the excepted district or of the divisional executive as the case may be, to allow direct access to the Ministry on matters which, under the scheme of divisional administration as approved by him, are delegated functions.

It will be appreciated that on matters of policy, as distinct from day-to-day administration and detailed application of policy, correspondence will need to be conducted with the local education authority. The line of demarcation between the two may, at this stage, not be easy to define, and the Minister may, therefore, in the light of experience, find it desirable at a future date to issue detailed instructions indicating more precisely those matters which are the proper subject for direct communication with his Department. In the meantime, in cases of doubt, the local education authority should be consulted before any approach is made to the Ministry.

In order that the local education authority may be kept properly informed, copies of all communications that may be addressed by the divisional executives concerned to the Ministry should simultaneously be sent to the authority: the Ministry will similarly send to the authority copies of its communications with such divisional executives.

APPENDIX D

See Section 62.

Training of Teachers a Hundred Years Ago

Soon after her Accession to the Throne, Queen Victoria (then not quite 20 years old) began to take an interest in the question of education and deplored the lack of instruction among the poor, a deficiency "not in accordance with the character of a civilised and Christian nation," she said.

The Government of the day did not agree with a suggestion to appoint a special Board or Department, and the Queen exercised her prerogative by appointing a committee of her own Privy Council to deal with education.

This committee prepared fresh regulations for distributing the grants which had first been made in 1833 towards the "Erection of school houses for the education of the children of the poorer classes in Great Britain." The committee of the Privy Council also decided to build a Government-supported normal school for the training of teachers. This suggestion aroused tremendous opposition from those who deprecated State-provided education, and also who differed on the religious questions involved in the training of teachers.

> As showing the extent of the opposition, it may be noted that a motion to ask the Queen to withdraw Her Order appointing the "Committee of the Privy Council for Education," after a three-day stormy debate, was lost by only five votes, when 555 recorded their votes.

The proposal to found a State-supported normal school was dropped and some aid was granted to the National Society and to the British and Foreign School Society to build such.

The British Society developed their Borough Road College, and the National Society opened Chelsea Training College in 1841 with, in 1884, Battersea College for Men, and Whitelands College for Mistresses.

The Diocesan Boards of the Church of England in various districts began to provide short courses for men and women. The following particulars of one such course may be of interest as *showing the procedure a hundred years ago.*

The Coventry Archidiaconal Board (then in the Worcester diocese) in 1844 passed the following resolutions :—

> (1) That the schoolmasters and schoolmistresses of the several schools within the Archdeaconry do assemble together at the Central School, Coventry, for four weeks, for mutual improvement, during the harvest holydays.
>
> (2) That the offer of the National Society, to send down an organising master to superintend upon the above occasion, be gratefully accepted.
>
> (3) That the assembling of such masters and mistresses do take place at the Central School, Coventry, on Monday, the 12th day of August next (1844).
>
> (4) That a sum not exceeding seven shillings per week be paid by the Board to each master and mistress who shall attend at such meeting for mutual improvement, towards their board, lodging, and travelling expenses.

Sixty teachers availed themselves of the advantages thus proposed. These teachers were allowed to return home on the Sundays, if thought requisite.

The *Coventry Standard* gave the following particulars of the manner in which this meeting of masters and mistresses was conducted :—

"The masters and mistresses assembled at nine o'clock a.m., and prayers from the Liturgy were read; they were arranged in one class till ten

o'clock for religious instruction, during which doctrinal, historical, geographical, and Scriptural questions were asked. The mistresses then retired into the girls' school, where the whole of the children were assembled in classes. Half of them were placed as teachers of the different classes, the other half were formed into a class for study; some of them being employed in working out from memory, or from copies, historical events, facts in geography, or arithmetical questions. This continued from ten to twelve.

"During this time the masters were engaged in the other school in lectures and examinations under the organising master—from ten to half-past ten in geography; from half-past ten to a quarter past eleven, in arithmetic; and from a quarter past eleven to twelve, in the derivation of words and grammar. At twelve they were dismissed and assembled again at two p.m.

"The masters then went into the girls' school, and were divided in superintending the classes, and in other studies, as the mistresses had been in the morning.

"The mistresses assembled in the boys' school and received instruction from the organising master; from two to three-quarters past two, in arithmetic; from three-quarters past two to half-past three, in reading and explanation; from half-past three to four, in the geography of Palestine; and from four to five, in derivation and grammar.

"At five they were all dismissed, but assembled again at half-past six, when three-quarters of an hour were devoted to the theory and practice of vocal music, as applied by Hullah in psalmody and chanting; and the same time to lectures and conversations on topics connected with the system of teaching, such as catechetical instruction, the monitorial system, attendance of children, effects of emulation, rewards and punishments, etc., etc. At eight o'clock they were dismissed for the night, with prayers from the Liturgy.

"Each master and mistress, at these several times of meeting, entered their names in a book, stated the precise hour at which they came, and if absent at any time had to account for their absence. There was no meeting on Saturdays. Such masters and mistresses as had Sunday schools were allowed to go home to superintend them, and *those who remained in Coventry had to enter in the register the manner in which they spent their Saturdays and Sundays.*

"The same system which has now been detailed was pursued throughout the month, with the exception that in the alternate weeks the morning and afternoon courses of education were changed with the masters and mistresses. Their attendance and attention during the whole of this period were most exemplary.

"There was scarcely a single absence but from sickness or necessity; and their anxiety to be instructed, their desire to assist each other, and, above all, *their humility and docility in listening to all that was put before them was highly creditable to them.*"

On Friday the 6th of September, 1844, the instruction closed.

N.B.—The *Pupil Teacher System* for building up and maintaining, on a basis of apprenticeship a supply of professional teachers was not introduced until 1846.

APPENDIX E

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SOME NOTES ON EDUCATIONAL ADVANCES

By A. E. IKIN, B.SC., LL.D.,
Formerly Director of Education, Blackpool

To a student of the development of educational aims, through a period of time, the changes do not form merely circles of recurrent ideas, but take rather a spiral form, each turn rising to a higher level than the preceding turn.

The Sociologists, under the leadership of Professor Mannheim, are drawing attention to necessary changes which are inherent in our present changing society.[1]

The country is groping its way towards a planned *society which is neither Fascism nor Communism, one which, while being planned, will maintain its democratic control and keep the spheres of freedom and free initiative which are the genuine safeguards of culture and humanity.*

The youth of to-day will soon form that society, and have to work within it, and there is a growing recognition that we must fit them for taking control when we, the older members of society, have passed on.

Sociology is altering the current views of the aims of educational work. In the past we have been concerned more with answering the question, "*What can youth expect from us?*" Now the emphasis is being changed, and the question arising is "*What can youth give us?*"

One of the most important changes in the educational field seems to be the gradual change from a compartmental concept of education to an integral concept, a concept that the developing personality is one, and not merely a junction of pieces.

Formerly education was treated as a more or less self-sufficient compartment of life. It was thought of in terms of schools and classes where teachers instructed boys and girls in subjects specified in the curriculum.

The progress of the pupil, and indirectly the capacity of the teacher, was assessed by a system of marks. After a secondary school education there were written examinations and if these were passed to the satisfaction of the examining body the aim of education had been achieved. (Later some began to add vocational education, how to earn a living.)

Education was a compartment up to that age limit at which a human being was expected to be accessible to educational influence.

The pupil then came into another compartment of life, as it were. The education given in the schools had been given as an aim in itself, and the boy entered the world of work where conditions were so different. The key to the understanding of the mentality of modern youth cannot be found *alone* in the biological fermentation or bodily changes at this stage of human development. The decisive factor is that youth at this age enters public life and it is then that in modern society he is confronted with the chaos of antagonistic valuations. The conflict-consciousness of

[1] See Mannheim's *Diagnosis of our Time* [Kegan Paul, Trench, Trubner and Co., Ltd.].

our youth is only the reflection of the chaos that prevails in our public life and the bewilderment which ensues is a natural reaction of the inexperienced mind.

Up to puberty the child lives mainly in the family and his attitudes are mainly shaped by the emotional and intellectual attitudes which prevail there.

In the period of adolescence he makes contact with the neighbourhood, the community, and certain spheres of public life. Thus the adolescent is not only biologically in a state of fermentation but sociologically he enters a new world where the habits and customs and value systems are different from what he has known so far. What to him is a challenging novelty, is to the grown-up already habitualised and taken as a matter of course.

The new Education Act will be coming before Parliament soon, but that will be concerned chiefly with the mechanism of administration; we have to consider how the education given shall be developed within the framework of the Education Acts as thereby amended.

What youth should be taught, and how, will depend upon the actual nature of society in which youth finds itself after the war, and to which youth will have to make its contribution. It will depend to a large extent on the answer we give to the question as to what we expect youth to contribute to society.

The various youth organisations which are developing all over the country will depend for their success on their answer to this same question. If they are treated as ends in themselves they will come far short of their potential value, which should be to increase their knowledge of the concrete environment of society at large to which the individual is expected to make his contribution.

The organisations should all be under the supervision of the Board of Education and not under the Ministry of Labour nor the Ministry of Health.

They should not be imitations of the Nazi Youth Movement, which trains for fanatical obedience and complete conformity to one pattern, but a democratic utilisation of group existence to train personalities which can both co-operate in groups, and also become persons of judgment and independence of mind. On the lower levels, basic conformity, cohesion, habit making, emotional training, obedience, should be developed, and on the higher levels a gradual emergence of those qualities which make for individualisation and the creation of independent personalities.

The war has made clear the legal obligation of citizenship, and the hour of trial and sacrifice will bring to this generation a better comprehension of the relations between citizen and government.

One of the essential elements of educational effort, almost the chief of them, is that *the future citizen be made to see unmistakably that if on one side of the shield are written rights, on the other are indelibly inscribed duties.*

After the last great war there was an absence of planning, all were too eager to get back to the remembered conditions of the pre-1914 world. This absence of planning led to chaotic competitive conditions which ultimately led to thirty million being unemployed in the world.

After this great war there will be no way back to a *laissez-faire* order of society. The war has been the maker of a silent revolution which is now in progress which is preparing the road to a new type of planned society.

One of the lessons to be learned from the war economy is that business and finance are public services as much as health services or social activities, and if they are left in private hands it can only be as long as their management proves more effective than a collective one.

Ownership of capital and private profits should be admitted to a certain extent but should be controlled whenever they are antagonistic to public interest, but in all cases a careful watch on the liberties of the people must be kept.

In Germany the key positions in industry with the powerful controls over public opinion, over education and over action were secured by the Nazi party which enabled a powerful dictatorship to develop.

We may say that such conditions are not possible in Britain. Are we not fighting for freedom and responsibility? Is not this totalitarian development (in which power is in the uncontrolled and unchallengeable possession of a few hundred people maintaining their ascendancy by organised force) the thing we are fighting? This would be contrary to our ideals.

But the mere possession of a Parliament is not sufficient by itself.

As Macmurray has pointed out in his *Challenge to the Churches*, "the British House of Commons became an effective instrument of democracy three hundred years ago when it secured the exclusive right to vote supplies to the Government."

Our democracy has rested for three hundred years on the discovery that whatever body controls the disposal of the nation's wealth can dictate the Government's policy. Herein lies one of our present difficulties. If we bring the whole of the economic field within the control of political authority we lose our traditional instrument for keeping the Government in its place. The disposal of the wealth of the country will then be in the hands of the Government. Instead of the activities of the Government depending upon the goodwill of the House of Commons the activities of the House of Commons will depend upon the goodwill of the Government.

This is the problem which Soviet Russia has so far failed to solve. Although Russia is the antithesis of the Fascist State, being the product of a people's revolution, and although we may not agree with the methods by which it was brought about, yet it represents a definite advance in a democratic direction; *but it has not discovered how the people are to control a Government which controls the economic organisation, and therefore the means of life, the wealth of the nation.*

It is essential that the desired "social security"—the freedom from that spectre, the haunting fear of the worker, of unemployment, of inability to foresee how the absolute necessaries of life, food, clothing, and shelter shall be assured may be provided after the war, and one of the most important questions of the day is: "What is the best way of obtaining this? What form of society will give this freedom?"

But whatever form of society may be evolved we must make use of the potential forces of youth for the development of the form of society which later on they must work with and in.

In the past youth had not its proper place and share in public life; *youth had no vested interests in the existing social order*, to some extent being an outsider, for educational aims had not brought contact therewith. Youth was liable to sympathise with social movements of those dissatisfied with the existing state of affairs, and be led away by others who had ulterior motives.

This to some extent accounts for occasional rioting, etc., by university students in various parts of the world.

How is the change-over to be brought about? Education Acts only provide the administrative mechanism within which education is provided and by which society gives to youth.

In the lower forms of schools and with younger children they must develop the power to use the "tools of learning" so that they can read and write and make calculations "like father and mother and teacher do."

The team spirit must be encouraged. They must work hard for the honour of their school so that they may be fitted to do well in the school to which they will go when they move on, so that their new school will recognise what a good school they have come from. Co-operative games and games with other schools will help them to realise that they are part of a larger world than their own individual home and school. It is at this stage that habits of obedience will be inculcated.

The next stage as to how the community spirit can best be developed is not clear and discussions are taking place as to the best form of education during adolescence; there is as yet no settled policy, but this will ultimately emerge.

The community spirit and the attitudes which underlie it are best acquired during adolescence in the gangs of youngsters. It is here that man learns to understand the self-regulating powers of spontaneous group life and the spirit of solidarity. The repression of the craving for communal experience in adolescence when it is strongest, may at a later stage lead to an exaggerated competitiveness.

The public schools, through their boarding system, create an opportunity for gang experience, but their habit-developing system will require testing to see if what they do is of lasting value and adapted to the new needs of the community.

In a real democracy the gang-age should be used for the real interpenetration of various classes, for the creation of a nation-wide basic conformity and unity rather than serving the idea of segregation and group seclusion. In their boarding system and in many other features of their traditions they have preserved virtues which need to be socialised rather than extirpated.

We must consider the fact of the social and cultural rise of the ascending classes as a problem of social strategy in which primary and secondary schools (including the public schools), universities, youth organisations, adult education, etc., have their role to play.

In this scheme the public schools have an important part to play not merely in broadening the social basis of selection and thereby simply to assimilate the best from the rising classes, but they should try to establish a living relationship of give and take among the adolescents of different social strata, such as the Duke of York's (H.M. the King) camps, rather than developing into a stronghold of privilege.

The Butterley Iron Company have just instituted a system of scholarships for sons of their own employees. These are tenable for five years at Trent College, and the first six were admitted in September. These scholarships include boarding expenses as well as educational costs. In five years' time there will be thirty of these Butterley scholars in residence (six a year). Barclay's Bank have decided to award scholarships similar to these for sons of the bank's employees, but these are not restricted to the one public school.

At the basis of all our plans for helping youth to prepare to take part in the organisation of post-war society by evolution, rather than revolution, the spiritual values must be stressed.

It is the absence of spiritual values and the adoption of material values instead which has produced the mentality of Germans.

The primary and preparatory schools are the places for indoctrination, but the time comes when a boy or girl becomes a critic of the things he has received in home and church and the school. Examinations of beliefs begin, and guidance is required in the business of re-thinking. The principles underlying good citizenship and political history are very important when civic consciousness is just awakening.

Our aim throughout the educational system should be to promote such studies and teaching as may best contribute to mutual understanding, co-operation, and goodwill between all peoples.

APPENDIX F

List of Orders and Circulars issued by the Ministry

REGULATIONS

Draft Education Conference Regulations, 1945 [Section 83].
Central Welsh Board Amending Regulations, 1945. Amendment to Grant Regulation No. 11 (1927).
Draft Regulations for Registration of Pupils at Schools [Section 80].
Draft Physical Training Clothing Regulations [Section 53 (3)].
Central Advisory Council for Education Regulations [Section 4 (4)]. S.R.O., 1945, No. 152.
Education Research Grant Regulations, 1945 [Section 100 (1) (*b*)].
Education (Compensation Forms) Regulations, 1945, under para. 11 of 4th Schedule, Local Government Act, 1933, as applied by Section 98 (3) of the Education Act, 1944.
Draft Regulations prescribing standards for school premises, 1944 [Section 10].
Draft of the County and Voluntary School Regulations, 1945 [Section 13 (3)].
Schemes of Divisional Administration (Notice) Regulations, 1944, d 13/12/44 under para 7, 1st Schedule, Part III. S.R.O., 1944, No. 1415.
Draft School Attendance Order Regulations, 1944, under Section 37.
Training College (Capital Grants) Provisional Regulations, 1945 [Section 100 (1) (*b*)].

CIRCULARS

Circular 5 of 15/9/44. Schemes of Divisional Administration.
Circular 11 of 7/11/44. Acquisition of Sites.
Circular 13 of 10/11/44. Leisure Time Provision for School Children.
Circular 17 of 28/11/44. National Camps.
Circular 18 of 19/12/44. Emergency Training of Teachers.
Circular 21 of 4/1/45. School Meals.
Circular 23 of 11/1/45. Financial Arrangements consequent upon the provisions of Section 6 of the Act.
Circular 25 of 9/3/45. [Circular 1 of Ministry of Agriculture and Fisheries]. Co-ordination between Education and Agricultural Authorities.
Circular 29 of 12/3/45. School Medical Services [Section 48 (3)].
Circular 32 of 16/3/45. Direct Grant Grammar Schools.
Circular 33 of 20/3/45. Staffing of Primary and Secondary Schools.
Circular 34 of 27/3/45. Draft Regulations, 1945 : Provisions of Milk and Meals.
Circular 36 of 28/3/45. Teachers Superannuation Act, 1945, in operation on 1st April, 1945.
Circular 37 of 23 3 45. Forwarding Grant Regulations, 1945, proposed under Section 100.
Circular 39 of 23/3/45. Accords approval of Scales of Salaries submitted by the Burnham Committee for :—
(*a*) teachers in primary and secondary schools ;
(*b*) teachers in technical schools ;
(*c*) unqualified and temporary teachers.
Circular 41 deals with special educational treatment for handicapped children including arrangements for boarding out with foster parents.

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