

## SCHEDULES

### SCHEDULE 12

Section 37.

#### INSTRUMENTS OF GOVERNMENT

##### *Contents and form of instrument of government*

- 1 (1) The instrument of government for a maintained school shall set out—
- (a) the name of the school;
  - (b) the category of school (within section 20(1)) to which the school belongs;
  - (c) the name of the governing body of the school;
  - (d) the manner in which the governing body are to be constituted, specifying—
    - (i) the categories of governor and the number of governors in each category,
    - (ii) the categories of person from whom or from amongst whose members nominations for the appointment of any additional governors required by virtue of paragraph 15 of Schedule 9 are to be sought,
    - (iii) the number of such governors for whose appointment nominations are to be sought in the case of each such category of person,
    - (iv) where the school is a community special school, whether it has a representative governor by virtue of paragraph 10 of Schedule 9, and
    - (v) the total number of governors;
  - (e) where the school has foundation governors—
    - (i) the name of any foundation body or person who is entitled to appoint such governors and (if there is more than one such person) the basis on which such appointments are made,
    - (ii) details of any foundation governorship to be held ex officio by the holder of a named office and the name of any person entitled to make any appointment by virtue of paragraph 16 of Schedule 9, and
    - (iii) the procedure to be adopted for eliminating any excess in the number of foundation governors for the purposes of paragraph 17 of that Schedule;
  - (f) where the school is a community special school, the names of any body or bodies by whom any representative governor is appointed under paragraph 10 of that Schedule;
  - (g) where the school is a foundation or voluntary school which has a religious character, a description of the ethos of the school; and
  - (h) the date when the instrument takes effect.
- (2) The manner in which the governing body are to be constituted, as set out in the instrument in accordance with sub-paragraph (1)(d), must conform with the provisions of—
- (a) Part II of Schedule 9, and

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- (b) any regulations made under paragraph 15 of that Schedule, as they apply to a school of the category to which the school belongs.
- (3) Where, for the purposes of any provision of that Part of that Schedule, it is material to determine the number of registered pupils at the school, that number shall be determined as at the date when the instrument is made.
- (4) The instrument shall (subject to any other statutory provision) comply with any trust deed relating to the school.
- (5) The instrument shall be made in such form as may be prescribed.

*Making of instruments of government*

- 2 (1) Paragraph 3 shall apply in connection with the making of an instrument of government for a maintained school subject to any relevant modifications.
- (2) In sub-paragraph (1) “relevant modifications” means—
  - (a) where the instrument of government is to be made in pursuance of paragraph 6 for a school which is to become a maintained school on the appointed day in accordance with Schedule 2, modifications prescribed under that paragraph;
  - (b) where the instrument of government is to be made in pursuance of regulations under section 44 for a new maintained school, modifications prescribed under that section; and
  - (c) where the instrument of government is to be made in pursuance of regulations under paragraph 5 of Schedule 8 for a school changing its category in accordance with that Schedule, modifications prescribed by regulations under that paragraph.

*Procedure for making instrument*

- 3 (1) The governing body shall prepare a draft of the instrument and submit it to the local education authority.
- (2) Where the school has foundation governors, the governing body shall not submit the draft to the authority unless the following persons have agreed to the contents of the draft, namely—
  - (a) the foundation governors;
  - (b) any trustees under a trust deed relating to the school; and
  - (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority.
- (3) On receiving the draft the authority shall consider whether it complies with all applicable statutory provisions, and if—
  - (a) the authority are content with the draft, or
  - (b) there is agreement between the authority, the governing body and (if the school has foundation governors) the persons mentioned in sub-paragraph (2) that the draft should be revised to any extent,
 the instrument shall be made by order of the authority in the form of the draft or (as the case may be) in the form of the revised draft.
- (4) If, in the case of a school which has foundation governors, there is at any time disagreement as to the contents of the draft among the bodies and persons mentioned

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in sub-paragraph (3)(b), any of those bodies or persons may refer the draft to the Secretary of State; and on such a reference the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

- (5) If neither of paragraphs (a) and (b) of sub-paragraph (3) applies in the case of a school which does not have foundation governors, the authority shall—
- (a) notify the governing body of the reasons why they are not content with the draft instrument, and
  - (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the draft;
- and the instrument shall be made by order of the authority either in the form of a revised draft agreed between the authority and the governing body or (in the absence of such agreement) in such form as the authority think fit having regard, in particular, to the category of school to which the school belongs.
- (6) When taking any decision as to the name of the school the governing body, the authority and (if the school has foundation governors) the persons mentioned in sub-paragraph (2), shall have regard to any guidance given from time to time by the Secretary of State.
- (7) Nothing in this paragraph requires the agreement of, or enables any objection to be made by, any body or person to any part of a draft instrument that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

#### *Review of instruments of government*

- 4 (1) The governing body or the local education authority may review the instrument at any time after it is made.
- (2) The governing body or the authority shall review the instrument on such occasions as may be prescribed; and regulations may require the instrument to be varied at the instance of the governing body in such circumstances as may be prescribed.
- (3) Where—
- (a) on any review the governing body or the authority decide that the instrument should be varied, or
  - (b) any regulations under sub-paragraph (2) require the instrument to be varied, the governing body or (as the case may be) the authority shall notify the other of their proposed variation.
- (4) Where the governing body have received a notification under sub-paragraph (3), they shall notify the authority as to whether or not they are content with it.
- (5) Where the school has foundation governors, the governing body shall not give the authority—
- (a) any notification under sub-paragraph (3), or
  - (b) any notification under sub-paragraph (4) to the effect that they are content with the authority's proposed variation,
- unless the persons mentioned in paragraph 3(2) have agreed to the proposed variation.
- (6) If—

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- (a) both the governing body and the authority are content with a proposed variation as notified under sub-paragraph (3), or
  - (b) there is agreement between the authority, the governing body and (if the school has foundation governors) the persons mentioned in paragraph 3(2) that some other variation should be made instead,
- the instrument shall be varied accordingly by order of the authority.
- (7) If, in the case of a school which has foundation governors, there is at any time disagreement as to the proposed variation among the bodies and persons mentioned in sub-paragraph (6)(b), any of those bodies or persons may refer the proposed variation to the Secretary of State; and on such a reference the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.
- (8) If neither of paragraphs (a) and (b) of sub-paragraph (6) applies in the case of a school which does not have foundation governors, the authority shall—
- (a) notify the governing body of the reasons—
    - (i) why they are not content with the governing body’s proposed variation, or
    - (ii) why they wish to proceed with their own proposed variation,
 as the case may be, and
  - (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the variation;
- and the instrument shall be varied by order of the authority either in the manner agreed between the authority and the governing body or (in the absence of such agreement) in such manner as the authority think fit having regard, in particular, to the category of school to which the school belongs.
- (9) Where there is no such agreement (and no variation is required by regulations under sub-paragraph (2)), sub-paragraph (8) does not require the authority to vary the instrument if they consider it appropriate not to do so.
- (10) The following requirements under paragraph 3, namely—
- (a) the requirement under sub-paragraph (3) for the authority to consider compliance with all applicable statutory provisions, and
  - (b) the requirement under sub-paragraph (6) to have regard, in connection with the name of the school, to guidance given by the Secretary of State,
- shall apply in relation to a proposed variation of an instrument of government as they apply in relation to a draft of such an instrument.
- (11) Where an instrument of government is varied under this paragraph—
- (a) the instrument shall set out the date on which the variation takes effect, and
  - (b) paragraph 1(3) shall apply in relation to any variation relating to the manner in which the governing body are to be constituted as if it referred to the date when the variation is made rather than the date when the instrument is made.
- (12) Nothing in this paragraph requires the agreement of, or enables any objection to be made by, any body or person to any proposed variation that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

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*Other requirements relating to instruments of government*

- 5 Regulations may make provision imposing on local education authorities requirements with respect to the provision of—
- (a) copies of instruments of government made or varied by them; or
  - (b) information relating to such instruments.

*Duty to secure making of first instrument of government*

- 6 (1) A local education authority shall secure that, by the end of such period as may be prescribed, an instrument of government has been made in accordance with this Schedule for each school which is to be, or is, maintained by them as from the appointed day in accordance with section 20(4) or (5).
- (2) Regulations may make such provision as the Secretary of State considers necessary or expedient in connection with the making of instruments of government in pursuance of sub-paragraph (1), including provision modifying any provision of this Schedule or Schedule 9.