



# Education Act 1993

## 1993 CHAPTER 35

### PART II

#### GRANT-MAINTAINED SCHOOLS

#### CHAPTER V

##### GOVERNMENT, CONDUCT ETC. OF GRANT-MAINTAINED SCHOOLS

##### *The governing instruments*

#### **55 Constitution of governing body and conduct of school**

- (1) For every governing body of a grant-maintained school there shall be—
  - (a) an instrument (to be known as the instrument of government) providing for the constitution of the governing body, and
  - (b) an instrument (to be known as the articles of government) in accordance with which the school is to be conducted.
- (2) The instrument and articles of government—
  - (a) shall comply with any requirements imposed by or under this Chapter, and
  - (b) may make any provision authorised by or under this Chapter to be made and such other provision as may be necessary or desirable.
- (3) Subject to any express provision of the instrument or articles of government, the school shall be conducted in accordance with any trust deed relating to it.
- (4) Schedule 5 to this Act (membership and proceedings etc. of governing bodies) shall have effect.
- (5) Schedule 6 to this Act (content of articles of government) shall have effect.

## **56 Initial instruments and articles of government**

- (1) The initial instrument of government for the governing body of a grant-maintained school, and the initial articles of government for such a school, shall be such as are prescribed.
- (2) The initial instrument of government shall have effect as from the incorporation date.
- (3) The initial articles of government shall have effect as from the date of implementation of the proposals but, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, such of the articles as may be prescribed shall have effect as from the incorporation date.

## **57 Subsequent instruments of government**

- (1) The Secretary of State may—
  - (a) if the governing body of a grant-maintained school submit a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit, and
  - (b) if such a governing body submit draft modifications of an instrument made under paragraph (a) above or, where an instrument of government made under Chapter IV of Part I of the Education Reform Act 1988 has effect by virtue of paragraph 1(2) of Schedule 20 to this Act, of that instrument, by order modify the instrument concerned in terms of the draft or in such terms as he thinks fit, but shall not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the governing body.
- (2) No order may be made under subsection (1) above in respect of a school having foundation governors unless the governing body have consulted—
  - (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).
- (3) The Secretary of State may by order modify the instrument of government for the governing body of any grant-maintained school.
- (4) An order under subsection (3) above—
  - (a) may relate to all grant-maintained schools, to any category of such schools specified in the order or to any such school so specified, but
  - (b) shall not be made unless the Secretary of State has consulted—
    - (i) the governing body of each grant-maintained school to which the order relates,
    - (ii) if the order relates only to a school having foundation governors, the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
    - (iii) if the order relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors, a body appearing to the Secretary of State to be representative of the church in question in

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matters relating to the provision of education in grant-maintained schools having foundation governors.

- (5) Where, by reason of the making of a new instrument, or the modification of an instrument, under this section the number of governors of any category will (unless the required number of governors of that category resign) exceed the number provided for in the instrument, the new instrument or, as the case may be, the instrument as modified shall provide—
- (a) for such number of governors of that category as is required to eliminate the excess to cease to hold office, and
  - (b) for the selection of those who are to cease to hold office.

## **58 Subsequent articles of government**

- (1) The governing body of a grant-maintained school may, with the consent of the Secretary of State—
- (a) make new articles of government in place of the existing articles for the school, or
  - (b) modify any articles made under paragraph (a) above or, where articles made under Chapter IV of Part I of the Education Reform Act 1988 have effect by virtue of paragraph 1(2) of Schedule 20 to this Act, those articles.
- (2) Before exercising that power, the governing body of a school having foundation governors shall consult—
- (a) the person who appoints the foundation governors, and
  - (b) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different).
- (3) The Secretary of State may by a direction under this section require the governing bodies of grant-maintained schools or any class of such schools specified in the direction or the governing body of any particular grant-maintained school so specified to modify their articles of government in any manner so specified.
- (4) Before giving a direction under this section, the Secretary of State shall consult—
- (a) the governing body or (as the case may be) each governing body to which the direction applies,
  - (b) if the direction relates only to a school having foundation governors, the person who appoints them and, if it is a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority (if different), and
  - (c) if the direction relates to two or more schools and any of the schools are Church of England, Church in Wales or Roman Catholic Church schools having foundation governors, a body appearing to the Secretary of State to be representative of the church in question in matters relating to the provision of education in grant-maintained schools having foundation governors.

### *Governors*

## **59 Categories of governors**

Schedule 7 to this Act (expressions used in connection with categories of governors) shall have effect.

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## **60 Parent governors**

- (1) Subject to subsection (6) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include parent governors.
- (2) Subject to subsection (7) below, the instrument shall provide for the number of parent governors to be—
  - (a) in the case of a primary school, not less than three nor more than five, and
  - (b) in the case of a secondary school, five.
- (3) The instrument shall provide that if—
  - (a) one or more vacancies for parent governors are required to be filled by election, and
  - (b) the number of parents standing for election as parent governors is less than the number of vacancies,the required number of parent governors shall be made up by persons appointed by the other members of the governing body.
- (4) The instrument shall require governors, in appointing a person under a provision made by virtue of subsection (3) above—
  - (a) to appoint a person who is the registered parent of a registered pupil at the school, where it is reasonably practicable to do so, and
  - (b) where it is not, to appoint a person who is the parent of one or more children of compulsory school age.
- (5) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a parent governor to the new governing body—
  - (a) section 15(2) to (6) of the Education (No. 2) Act 1986 (qualifications and arrangements for election of parent or teacher governors) shall apply as it applies in relation to the election of a parent governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a parent governor,and the instrument shall have effect accordingly.
- (6) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as parent governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (7) In the case of a primary school, the initial instrument shall provide for the number of parent governors to be such number (being not less than three nor more than five) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) Subsection (3) above does not apply, in the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, to vacancies arising before the date of implementation of the proposals.

## **61 Teacher governors**

- (1) Subject to subsection (4) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include teacher governors.
- (2) Subject to subsection (5) below, the instrument shall provide for the number of teacher governors to be either one or two.
- (3) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, in relation to the election of a person as a teacher governor to the new governing body—
  - (a) section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply as it applies in relation to the election of a teacher governor to the existing governing body, and
  - (b) the new governing body shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a teacher governor, and the instrument shall have effect accordingly.
- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the instrument shall have effect as if—
  - (a) before the date of implementation of the proposals, the governing body had power to appoint as teacher governors persons who satisfy the prescribed requirements, and
  - (b) the first appointments were to be made before that date.
- (5) The initial instrument shall provide for the number of teacher governors to be such number (being either one or two) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.

## **62 Head teacher**

- (1) Subject to subsection (3) below, the instrument of government for the governing body of a grant-maintained school shall provide for the governing body to include (as a governor ex officio) the person who is for the time being the head teacher.
- (2) In the case of a governing body incorporated in pursuance of proposals for acquisition of grant-maintained status, the reference in subsection (1) above to the head teacher, in relation to any time before the date of implementation of the proposals, is to the existing head teacher.
- (3) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school, the initial instrument of government for the school shall provide, in relation to any time before the date of implementation of the proposals when a person has been appointed to be the head teacher, for the governing body to include (as a governor ex officio) that person.

## **63 First governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or

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- (b) is established in pursuance of proposals published under section 48 of this Act, shall provide for the governing body to include first governors.
- (2) The instrument shall provide for such number of first governors as will secure that they outnumber the other governors.
- (3) Subject to subsections (5) and (6) below, the instrument—
- (a) shall require—
    - (i) at least two of the first governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school, and
    - (ii) at least two of the first governors to be (on the date or dates on which they respectively take office) members of the local community,but one person may satisfy both requirements, and
  - (b) shall require the governing body, in appointing first governors, to secure that those governors include persons appearing to them to be members of the local business community (and such persons may also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (4) The initial instrument shall provide for the number of first governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (5) In the case of a grant-maintained school which is a county school immediately before it becomes grant-maintained, the instrument, notwithstanding subsection (3) above, shall have effect in relation to the determination of initial first governors—
- (a) as if—
    - (i) it required the first governors to include at least two persons who on the date of their selection or nomination are parents of registered pupils at the school, and
    - (ii) it required the first governors to include at least two persons who appear to those selecting or nominating them to be members of the local community,but one person might satisfy both requirements, and
  - (b) as if it required the first governors to include persons who appear to those selecting or nominating them to be members of the local business community (and such persons might also satisfy one or both of the requirements of paragraph (a)(i) and (ii) above).
- (6) In the case of a grant-maintained school established in pursuance of proposals published under section 48 of this Act—
- (a) any provision of the instrument made by virtue of subsection (3)(a)(i) above shall not apply in relation to the appointment before the date of implementation of the proposals of any first governor, and
  - (b) any provision of the instrument made by virtue of subsection (3)(b) above shall apply as if references to the governing body were references to the funding authority.
- (7) References in this section to governors other than first governors do not include sponsor governors.

## **64 Power of the Secretary of State to replace first governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 48 of this Act,shall provide for the Secretary of State to have power, where any of subsections (2) to (4) below apply, to replace all or any of the first governors.
- (2) This subsection applies where the governing body have been guilty of substantial or persistent failure to comply or secure compliance with any requirement imposed by or under any enactment.
- (3) This subsection applies where—
  - (a) there is a report of an inspection of the school in which the person who made it expressed the opinion that special measures were required to be taken in relation to the school,
  - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion,
  - (c) if any registered inspector or member of the Inspectorate has made a later report of an inspection of the school under Chapter I of Part V of this Act, he did not express the opinion in the report that special measures were not required to be taken in relation to the school, and
  - (d) the Secretary of State has received a statement prepared under section 210 of this Act or the period allowed by subsection (2) of that section for the preparation of such a statement has expired;and expressions used in this subsection and in that Part have the same meaning as in that Part.
- (4) This subsection applies where in the opinion of the Secretary of State any action taken or proposed by the governing body of the school, or any failure of the governing body to act, is prejudicial to the provision of education by the school.
- (5) The instrument of government for a grant-maintained school which—
  - (a) is a county school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 48 of this Act,shall enable the Secretary of State to make such provision as he thinks fit for filling vacancies for first governors if it appears to him that the governing body are unable or unwilling to fill the vacancies.
- (6) Any provision made by the instrument of government in pursuance of section 63(3) of this Act shall not apply for the purposes of the appointment by virtue of this section of any first governor.

## **65 Foundation governors**

- (1) The instrument of government for the governing body of a grant-maintained school which—
  - (a) is a voluntary school immediately before it becomes grant-maintained, or
  - (b) is established in pursuance of proposals published under section 49 of this Act,shall provide for the governing body to include foundation governors.

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- (2) The instrument shall provide for such number of foundation governors as will secure that they outnumber the other governors.
- (3) Subject to subsection (5) below, the instrument may provide for any foundation governorship to be held ex officio.
- (4) Subject to subsection (7) below, the instrument—
  - (a) where it provides for a foundation governorship to be held ex officio, shall specify the office the holder of which is to be a foundation governor, and
  - (b) shall name the person or persons (if any) who are entitled to appoint any foundation governor.
- (5) An additional foundation governor appointed by virtue of provision made in the instrument of government in pursuance of section 67(2) of this Act may not be appointed to hold office ex officio.
- (6) Subject to subsections (8) and (9) below, the instrument shall provide for at least two of the foundation governors to be (on the date or dates on which they respectively take office) parents of registered pupils at the school.
- (7) The initial instrument shall—
  - (a) provide for the number of foundation governors to be such number (being a number which will secure that they will outnumber the other governors) as is specified,
  - (b) in the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, provide for the person or persons who, immediately before the incorporation date, were named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) to the existing governing body to be entitled to appoint the foundation governors for the governing body of the grant-maintained school,
  - (c) in the case of a grant-maintained school established in pursuance of proposals under section 49 of this Act, provide for the promoters to be entitled to appoint the foundation governors,
  - (d) where it provides for a foundation governorship to be held ex officio, provide for it to be held by the holder of a specified office,and in this subsection "specified" means specified in the proposals for acquisition of grant-maintained status or, as the case may be, the proposals for the establishment of a new grant-maintained school.
- (8) In the case of a grant-maintained school which is a voluntary school immediately before it becomes grant-maintained, the instrument shall have effect, notwithstanding anything in subsection (6) above, in relation to the determination of initial foundation governors as if it provided for the foundation governors to include at least two persons who on the date of their selection or appointment are parents of registered pupils at the school.
- (9) In the case of a grant-maintained school established in pursuance of proposals published under section 49 of this Act, subsection (6) above shall not apply in relation to the appointment of any foundation governor before the date of implementation of the proposals.



## **66 Sponsor governors**

- (1) The instrument of government for the governing body of a grant-maintained secondary school may—
  - (a) name a person as a sponsor of the school, and
  - (b) provide for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the instrument.
- (2) Where a governing body of a school are to be incorporated in pursuance of proposals for acquisition of grant-maintained status, or proposals for the establishment of a new grant-maintained school, which name a person as a sponsor of the school, and the school is to be a secondary school, the initial instrument of government shall provide—
  - (a) for the person so named to be a sponsor of the school, and
  - (b) for the governing body to include such number of sponsor governors, not exceeding four, as is specified in the proposals.
- (3) Where the instrument of government provides for two or more persons named as sponsors of the school in such proposals or, as the case may be, in the instrument to appoint governors—
  - (a) it shall provide for each sponsor to appoint such number of governors as is specified in relation to him in the proposals or, as the case may be, instrument, and
  - (b) it may not provide for any of those governors to be appointed by two or more sponsors acting jointly.
- (4) In the case of a governing body incorporated in pursuance of proposals for the establishment of a new grant-maintained school which name a person as a sponsor of the school, the instrument of government shall have effect as if it required the first appointments of sponsor governors to be made before the date of implementation of the proposals.

## **67 Additional governors**

- (1) The instrument of government for the governing body of a grant-maintained school shall enable the Secretary of State to appoint not more than two additional governors if it appears to him that the governing body are not adequately carrying out their responsibilities in respect of the conduct or management of the school.
- (2) The instrument shall enable the appointing authority, during any period when any additional governors appointed by the Secretary of State by virtue of subsection (1) above are in office, to appoint a number of additional first or, as the case may be, foundation governors not greater than the number of additional governors appointed by the Secretary of State who are then in office.
- (3) In subsection (2) above, “the appointing authority” means the person entitled to appoint the first or, as the case may be, foundation governors on the governing body or, if more than one person is so entitled, the persons so entitled acting jointly.

## *Powers*

### **68 Powers of governing body**

- (1) The governing body of a grant-maintained school incorporated in pursuance of proposals for acquisition of grant-maintained status may conduct a school of the same description as the school immediately before the date of implementation of the proposals.
- (2) The governing body of a grant-maintained school incorporated in pursuance of proposals for the establishment of a new grant-maintained school may conduct a school of the description in the proposals.
- (3) The school conducted by the governing body of a grant-maintained school shall not be regarded as of a different description, where changes have been made in the character or premises of the school since the date of implementation of the proposals, to that immediately before that date or, as the case may be, to that in the proposals if the changes—
  - (a) did not require authorisation under Chapter VII, or
  - (b) were authorised under that Chapter.
- (4) Subject to subsections (6) and (7) below and to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the conduct of the school as for the time being constituted.
- (5) The power conferred by subsection (4) above includes in particular power—
  - (a) in the case of a grant-maintained school established in pursuance of proposals for acquisition of grant-maintained status, to assume the conduct, as from the date of implementation of the proposals, of the school as constituted immediately before that date,
  - (b) in the case of a grant-maintained school established in pursuance of proposals for the establishment of a new grant-maintained school, to conduct, as from the date of implementation of the proposals, a school of the description in the proposals,
  - (c) to acquire and dispose of land and other property,
  - (d) to enter into contracts, including, in particular, contracts for the employment of teachers and other staff,
  - (e) to invest any sums not immediately required for the purposes of meeting the expenses of conducting the school or any liability transferred to the governing body under section 38 of this Act, and
  - (f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust, for such purposes.
- (6) Subsection (4) above does not confer power to borrow money, except money lent under section 92 of this Act.
- (7) The power to dispose of land mentioned in subsection (5)(c) above—
  - (a) does not include power to grant any mortgage, charge or other security in respect of any land, and
  - (b) may only be exercised with the written consent of the Secretary of State.

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- (8) Without prejudice to subsection (4) above, but subject to any provision made by the instrument or articles of government, the governing body of a grant-maintained school may provide education at the school which is neither primary nor secondary education if—
- (a) it is part-time education suitable to the requirements of persons of any age over compulsory school age, or full-time education suitable to the requirements of persons who have attained the age of nineteen years,
  - (b) it is part-time education suitable to the requirements of junior pupils who have not attained the age of five years and the school provides full-time education for junior pupils of the same age, or
  - (c) they do so as agents for a local education authority under arrangements made with the authority for the purpose.

## **69 Joint schemes**

- (1) Two or more grant-maintained schools may enter into a scheme under this section (referred to in this section and section 70 of this Act as a “joint scheme”).
- (2) A joint scheme may—
- (a) authorise or require the governing bodies of the schools to which the scheme applies to establish joint committees constituted in accordance with the scheme,
  - (b) provide for the meetings and proceedings of any joint committee so constituted, and
  - (c) authorise or require the governing bodies of the schools to which the scheme applies to delegate, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined to any joint committee so constituted.
- (3) A scheme providing for any joint committee must provide for the committee—
- (a) to consist only of persons who are governors of the schools to which the scheme applies, and
  - (b) to include a head teacher of one of those schools, a parent governor of one of those schools and a first or foundation governor of one of those schools.
- (4) A joint scheme may authorise or require the governing bodies of the schools to which the scheme applies to exercise jointly, in such circumstances as may be determined in accordance with the scheme, such of their functions as may be so determined; but such a scheme may not provide for the joint exercise of any function relating to the employment of teachers unless it also provides for the establishment of a joint committee to exercise that function.
- (5) In relation to any teacher employed in pursuance of a joint scheme, the School Teachers' Pay and Conditions Act 1991 shall have effect as if he were employed by the joint committee required by subsection (4) above to be established and that joint committee were the governing body of a grant-maintained school.
- (6) A joint scheme shall provide for any expenses of exercising any functions in pursuance of the scheme.
- (7) A joint scheme shall have effect notwithstanding anything contained (whether in pursuance of a requirement under this Act or otherwise) in the instrument or articles of government for any of the schools to which the scheme applies.

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- (8) A joint scheme shall not have effect in relation to any matter dealt with in any co-ordinated arrangements for admissions (within the meaning of section 260 of this Act) contained in an agreement approved by the Secretary of State under that section or made in pursuance of a scheme under that section.

## **70 Making and varying joint schemes**

- (1) A joint scheme shall not come into force until it has been approved by the Secretary of State.
- (2) A joint scheme shall provide for the scheme to cease to have effect where the governing bodies of all the schools to which the scheme applies agree.
- (3) A joint scheme—
- (a) may be varied by the governing bodies of all the schools to which the scheme applies if the variations are minor variations or the Secretary of State has approved the variations,
  - (b) if the Secretary of State so directs, shall be varied by the governing bodies in accordance with the direction, and
  - (c) if the Secretary of State so directs, shall cease to have effect.
- (4) The Secretary of State may—
- (a) approve a scheme, or variations, with such modifications as he thinks fit, or
  - (b) give a direction under subsection (3)(b) or (c) above,
- only after proper consultations.
- (5) In subsection (4) above, “proper consultations” means consultations with the governing bodies of every school—
- (a) in the case of a proposed scheme, to which the scheme will apply,
  - (b) in the case of a variation, to which the scheme applies, or will apply after the variation, and
  - (c) in the case of a direction for a scheme to cease to have effect, to which the scheme applies.
- (6) The Secretary of State may by order specify what descriptions of variation are to be regarded as minor for the purposes of this section.

*Schools acquiring grant-maintained status: determination etc. of initial governors*

## **71 Determination of initial parent and teacher governors**

- (1) Where proposals are required to be published under section 32 of this Act in respect of a school, this section applies for the purpose of determining the persons who are to be named in the proposals as proposed initial governors of any elected category.
- (2) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall secure that—
- (a) any election or appointment required for filling any vacancy on the existing governing body occurring before the date of publication of the proposals (including any vacancy arising by virtue of section 72(1) of this Act), and
  - (b) any election or appointment required by subsection (7) below,

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is held or made if possible before that date, and otherwise as soon as possible afterwards.

- (3) Subject to subsection (4) below, any person who on the date of publication of the proposals is an eligible governor of an elected category on the existing governing body shall be named in the proposals as published as a proposed initial governor of that category.
- (4) If the number of governors of any elected category to be specified in the proposals is less than the number which, on the date of publication of the proposals, will be the number of eligible governors of that category on the existing governing body, such of the eligible governors of that category as may before the date of publication of the proposals be determined—
  - (a) by agreement between them, or
  - (b) in default of agreement, by drawing lots,shall be named in the proposals as published as the proposed initial governors of that category.
- (5) The existing governing body shall secure that any persons required to be named in the proposals in accordance with subsection (4) above are determined before the date of publication of the proposals.
- (6) Subsection (7) below applies if the number which is, or is to be, specified in the proposals of governors of any elected category is greater than the complement of eligible governors of that category on the existing governing body on the date of publication of the proposals; and for those purposes that complement is—
  - (a) the number (if any) of eligible governors of that category on the existing governing body, plus
  - (b) the number (if any) of outstanding vacancies for governors of that category on the existing governing body.
- (7) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall secure that such number of persons are elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body as governors of that category as is required to make up the difference between the number specified or to be specified in the proposals and the complement of eligible governors of that category on the existing governing body.
- (8) In a case to which subsection (7) above applies, the persons to be named in the proposals as published as the proposed initial governors of the category concerned shall be—
  - (a) any eligible governor of that category, and
  - (b) any person elected or appointed under subsection (7) above as an initial governor of that category before the date of publication of the proposals.

## 72 Section 71: supplementary provisions

- (1) Subject to subsection (2) below, where the members of the existing governing body of a school to which section 71 of this Act applies include a person—
  - (a) who holds office as a governor of an elected category, and
  - (b) whose term of office is due to come to an end before the date of implementation of the proposals or at any time within the period of six months beginning with that date,

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the governing body may by notice in writing to that person terminate his term of office on a date specified in the notice.

- (2) The governing body may only terminate a person's term of office under subsection (1) above if—
  - (a) his term of office is due to come to an end after the proposed date of publication of the proposals, or
  - (b) it would not in their view be reasonably practicable, in the time available between the date on which his term of office is due to come to an end and the proposed date of publication of the proposals, to fill the vacancy by the procedure applicable under the Education (No. 2) Act 1986.
- (3) Without prejudice to section 8(2) of that Act (instrument of government for county, controlled or maintained special school to provide for four year term of office for governors other than *ex officio* governors), the term of office of a person elected or appointed in accordance with the requirements of that Act and any requirements of the instrument of government of the school to fill a vacancy arising by virtue of subsection (1) above shall be four years.
- (4) Where any such election or appointment as is referred to in section 71(2) of this Act is held or made on or after the date of publication of the proposals, the existing governing body shall publish at such time and in such manner as may be prescribed notice of the election or appointment.

### **73 Determination of initial first or foundation governors**

- (1) Where proposals are required to be published under section 32 of this Act in respect of a county school, the existing governing body shall select the persons who are to be the initial first governors.
- (2) Where proposals are required to be published under section 32 of this Act in respect of a voluntary school, the person or persons named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) to the existing governing body shall select the persons who are to be the initial foundation governors.
- (3) The duties under subsections (1) and (2) above are to be complied with, if possible, before the date of publication of the proposals and otherwise as soon as possible after that date.
- (4) Any person selected under subsection (1) or (2) above shall, if possible, be named in the proposals as published as a proposed initial first or, as the case may be, foundation governor.
- (5) In the case of any person so selected who is not named in the proposals as published, the existing governing body shall—
  - (a) give the Secretary of State notice in writing of the relevant particulars in respect of the person selected before such date as may be specified in directions given by the Secretary of State, and
  - (b) publish at such time and in such manner as may be prescribed notice of his selection.
- (6) Where the Secretary of State is notified of any particulars under subsection (5) above, he shall modify the proposals by including in them the particulars notified to him.

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- (7) The existing governing body shall secure that any selection required by subsection (2) above is carried out in accordance with that subsection.
- (8) Where any selection falls in accordance with subsection (2) above to be made by two or more persons, it shall be made by those persons acting jointly; and if they fail to agree on the selection, it shall be made by the Secretary of State or in accordance with directions given by him.
- (9) Before selecting, or giving any direction as to the selection of, an initial foundation governor in a case where religious education in accordance with the tenets of a particular religion or religious denomination is given to pupils at the school in pursuance of section 27 or 28 of the Education Act 1944 (religious education at voluntary schools), the Secretary of State shall consult the persons appearing to him to be the appropriate authority of the religion or denomination concerned.

#### **74 Replacement of proposed initial parent and teacher governors before incorporation**

- (1) This section applies where proposals published under section 32 of this Act are pending in respect of a school.
- (2) If a person named in the proposals as a proposed governor of an elected category who was elected under section 71 of this Act or this section—
  - (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,then, subject to subsection (3), below the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to the school shall secure that a person is elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body in his place.
- (3) Where in a case to which subsection (2) above applies the Secretary of State is satisfied that it would not be reasonably practicable to hold an election or make an appointment in accordance with that subsection in the time available, he shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (4) If at any time a person named in the proposals as a proposed governor of an elected category who was so named by virtue of being an eligible governor of that category—
  - (a) ceases to hold office on the existing governing body,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body who is at that time an eligible governor of that category who is neither named in the proposals nor prospectively disqualified as mentioned in paragraph (b) above.

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- (5) Where in a case to which subsection (4)(a) above applies—
- (a) there is no such eligible governor at the time in question, and
  - (b) the Secretary of State is satisfied that it would not be reasonably practicable in the time available before he determines the proposals to fill the vacancy on the existing governing body by the procedure applicable under the Education (No. 2) Act 1986,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (6) Where in a case to which subsection (4)(b) or (c) above applies there is no such eligible governor at the time in question, subsection (2) above shall apply as if the former proposed governor had been elected under section 71 of this Act.
- (7) If a person named in the proposals as a proposed governor of an elected category who was nominated by the existing governing body under this section—
- (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (8) References in this section to a person named in the proposals include any person required to be so named.
- (9) The existing governing body shall—
- (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (2), (4) or (7) above,
  - (b) make any nomination required for the purposes of this section, and
  - (c) give the Secretary of State notice in writing of the relevant particulars in respect of any person nominated by them under this section.

## **75 Replacement of proposed initial first or foundation governors before incorporation**

- (1) Where proposals published under section 32 of this Act are pending in respect of a county school and a person selected under section 73(1) of this Act to be a first governor—
- (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.



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- (2) Where proposals published under section 32 of this Act are pending in respect of a voluntary school and a person selected under section 73(2) of this Act to be a foundation governor—
- (a) dies,
  - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
  - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the person or persons named in the school's instrument of government as being entitled to appoint the foundation governors (within the meaning of the Education Act 1944) to the existing governing body.
- (3) Subsections (8) and (9) of section 73 of this Act apply for the purposes of subsection (2) above as they apply for the purposes of that section, but as if references to selection were to nomination.
- (4) The existing governing body shall—
- (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (1) or (2) above,
  - (b) make or secure the making of any nomination required for the purposes of this section, and
  - (c) give the Secretary of State written notification of the relevant particulars in respect of any person nominated under this section.

## **76 Elections and appointments required for determining initial governors of an elected category: supplementary provisions**

- (1) Section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply in relation to the election of a person under section 71 or 74 of this Act to hold office as an initial parent governor or an initial teacher governor as it applies in relation to the election of a parent governor or teacher governor to the existing governing body.
- (2) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 of this Act applies is the local education authority, the existing governing body shall give notice in writing to the authority of the proposed date of publication of the proposals for acquisition of grant-maintained status for the school.
- (3) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 or 74 of this Act applies is the local education authority, the existing governing body shall notify the authority in writing—
- (a) of any election or appointment which appears to them to be required under section 71 or 74 of this Act in relation to the proposed governing body, and
  - (b) if the number of eligible governors of any category on the existing governing body is for the time being less than the proposed number of initial governors of that category, of any vacancy on the existing governing body for a governor of that category.
- (4) Where an election or appointment required for determining a proposed initial governor of any category is held or made at a time when proposals published under section 32

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of this Act are pending in respect of the school, the existing governing body shall give the Secretary of State notice in writing of the relevant particulars in respect of the person elected or appointed.

- (5) Where the Secretary of State is notified of any particulars under subsection (4) above, he shall modify the proposals by including in them the particulars notified to him (in substitution, where appropriate, for any particulars they supersede).
- (6) For the purposes of subsection (4) above, an election or appointment is required for determining a proposed initial governor of any category if—
  - (a) it is required under section 71 or 74 of this Act, or
  - (b) it is required for filling a vacancy on the existing governing body for a governor of that category and the number of eligible governors of that category on the existing governing body is for the time being less than the proposed number of initial governors of that category.

## **77 Initial sponsor governors**

- (1) In relation to any governing body to be incorporated under Chapter II in pursuance of proposals for acquisition of grant-maintained status which give the name of a sponsor of the school, regulations shall make provision—
  - (a) for the determination of the persons who are to be the initial sponsor governors, and
  - (b) for the persons so determined to be named in the proposals, whether as published or as modified in pursuance of the regulations.
- (2) The regulations may in particular make provision corresponding to any of the provisions of sections 71 to 76 of this Act.

*New grant-maintained schools: determination etc. of initial governors*

## **78 Initial governors for new grant-maintained schools**

- (1) This section applies in relation to any governing body to be incorporated under Chapter IV.
- (2) Regulations shall make provision for the appointment of the persons who are to be the initial governors and, in particular, shall require each appointing authority—
  - (a) to obtain the Secretary of State’s consent before making any appointment, and
  - (b) to notify the Secretary of State before the incorporation date of the appointments to all the initial governorships for which the authority is the appointing authority.
- (3) In subsection (2) above, the “appointing authority” in relation to any appointment, means the person entitled to make the appointment.

*General and supplementary*

**79 Saving for defects in selection or nomination**

- (1) The proceedings of the governing body of a grant-maintained school shall not be invalidated by any defect in any procedure required under this Chapter in relation to the determination of any person to hold office as an initial governor.
- (2) This section does not prejudice the generality of paragraph 11 of Schedule 5 to this Act.

**80 Chapter V: interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) References to the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school are references to the authority or body by whom all necessary arrangements for any election of parent governors or teacher governors to the governing body of the school fall to be made under section 15(2) of that Act (which imposes responsibility for those arrangements on the local education authority in relation to county, controlled and maintained special schools and on the governing body of the school concerned in relation to aided and special agreement schools).
- (3) References, in relation to a vacancy for a governor of an elected category on the existing governing body of a school in respect of which proposals are required to be or have been published under section 32 of this Act and in sections 71(7) and 74(2) of this Act, to the procedure applicable under the Education (No. 2) Act 1986 are references—
  - (a) except where any provision made by virtue of section 5 of that Act (appointment of parent governors by governing body) applies, to the holding of an election under that Act, and
  - (b) where any such provision applies, to the making of an appointment in accordance with that provision.
- (4) A person named in proposals for acquisition of grant-maintained status in respect of a school as a proposed initial governor of any category shall be treated as becoming prospectively disqualified for holding office as such a governor on the proposed governing body if an event occurs in relation to him which, if—
  - (a) it had occurred on or after the incorporation date, and
  - (b) the instrument prescribed under section 56 of this Act for the governing bodies of schools of the kind in question had then been in force,would have caused him to become disqualified for holding such office.