
STATUTORY INSTRUMENTS

1998 No. 1969

The Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998

PART II

PROCEDURE FOR ALLOCATION TO NEW CATEGORIES

Meetings to take preliminary decision

3.—(1) The governing body of a school shall take on or before 20th November 1998 a decision (their “preliminary decision”) under paragraph 4 of Schedule 2 to the Act on the question whether—

- (a) to accept the school’s allocation to a particular category of schools in accordance with the indicative allocation set out in paragraph 3 of Schedule 2 to the Act, or
- (b) to opt for it to be allocated to a different category.

(2) The chairman of the governing body shall direct the clerk to the governing body as to the date for the meeting at which the governing body are to take their preliminary decision and the clerk shall, when convening that meeting, comply with such direction.

(3) Without prejudice to their obligation under paragraph (1), the governing body of a school may not take their preliminary decision at any meeting unless—

- (a) the clerk to the governing body, has given to every member of the governing body at least five school days notice of the meeting and that notice shall be given together with a copy of the agenda for the meeting which shall include the consideration of the governing body’s preliminary decision referred to in paragraph (1) as a specific item of business for the meeting; and
- (b) the clerk to the governing body has given at least twenty school days notice of the meeting—
 - (i) in the case of a Church school, to the appropriate diocesan authority; and
 - (ii) in the case of any school where any person holds land on trust for the purposes of the school, to such a person;

and the notice under sub-paragraph (b) shall state that any representations in response to the notice shall be sent to the clerk to the governing body no later than five school days before the date of the meeting.

(4) The clerk to the governing body shall give to every member of the governing body, at least two school days before the date of the meeting, a copy of any written representations received by him at any time up to five school days before the meeting, in response to the notice given under paragraph (3)(b).

(5) The governing body shall at the meeting to consider their preliminary decision take into account any representations made in response to the notice given under paragraph (3)(b).

Notification of preliminary decision

4.—(1) Following the taking of their preliminary decision, the governing body shall, no later than five school days following the date of the meeting at which that decision was taken—

- (a) notify the persons referred to in paragraph (3) of their preliminary decision, and
- (b) give the persons referred to in paragraph (3)(a) the information referred to in paragraph (2) and give the persons referred to in paragraph (3)(b) to (d) the information referred to in paragraph (2)(a) and (b).

(2) The information referred to in paragraph (1) is the following information—

- (a) in the case where the governing body's preliminary decision is to opt for the school to be allocated to a category other than its indicative allocation, the governing body's reasons for their preliminary decision;
- (b) the date on which the governing body took their preliminary decision;
- (c) that a ballot of parents will be required to be held on the question of the choice of category for the school if a petition from parents is received which meets the requirements of regulation 6;
- (d) a statement which sets out regulation 6 of these Regulations or a statement to the like effect;
- (e) the number, as determined in accordance with regulation 5(1)(a) and (b), of registered parents of registered pupils at the school required for such parents to be able to obtain a copy of the parental list;
- (f) a statement that the only purposes for which the parental list may be obtained are for raising a petition in relation to the choice of category for the school or for circulating information where a ballot is to be held on that question;
- (g) a statement that a registered parent of a registered pupil at the school is entitled to have his name and address excluded from the parental list where, no later than the end of the period of ten school days beginning with the date on which the governing body took their preliminary decision, he requests the governing body not to disclose that information; and
- (h) the last date by which the petition may be received by the governing body pursuant to regulation 6(5).

(3) The persons referred to in paragraph (1) are—

- (a) registered parents of registered pupils at the school;
- (b) the local education authority for the area in which the school is situated;
- (c) in the case of a Church school, the appropriate diocesan authority; and
- (d) any person holding land on trust for the purposes of the school.

Parental list

5.—(1) Where—

- (a) any ten or more registered parents of registered pupils at a school, or (if fewer)
- (b) a number of such parents equal to at least 20 per cent. of the number of registered pupils at the school, or
- (c) in the case of a Church school, the appropriate diocesan authority.

so request and paragraph (2) applies, the governing body of the school shall, subject to paragraph (4), provide one of those parents (who is nominated by those parents for the purpose) or the appropriate diocesan authority, as the case may be, with a list containing the name and address of every registered parent of a registered pupil at the school.

- (2) This paragraph applies if the request is made for the purpose of—
- (a) raising a petition on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17, or
 - (b) circulating information to any registered parent of a registered pupil at the school where a ballot of such parents is required to be held on that question pursuant to regulation 8.
- (3) If a registered parent so requests, the governing body shall inform him of the number of registered pupils at the school.
- (4) The governing body shall not disclose to a parent or the appropriate diocesan authority under paragraph (1) the name and address of any person who has, no later than the end of the period of ten school days beginning with the date on which the governing body took their preliminary decision, requested the governing body not to disclose that information; and accordingly, the name and address of that person shall be excluded from the list there mentioned.
- (5) A governing body who in pursuance of paragraph (1) provide copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

Parental Petition

- 6.—(1) Regulation 8 applies where the governing body of a school receive the first, but not any subsequent, petition which meets the requirements of this regulation.
- (2) The petition must be signed by a number of registered parents of registered pupils at the school equal to at least 20 per cent. of the number of registered pupils at the school; and in this paragraph “registered” means shown in the register kept under section 434 of the Education Act 1996 and the Education (Pupil Registration) Regulations 1995 as that register has effect on the date on which the petition is received.
- (3) The petition must include the name and address of each such parent who signs it and must indicate the name and address of the person who has organised the making of the petition.
- (4) The petition must state that those who sign it—
- (a) disagree with the governing body’s preliminary decision (which decision shall be stated in the petition);
 - (b) prefer the school to be allocated to a different category, in accordance with Schedule 2 to the Act and regulation 17 (which category shall be stated in the petition); and
 - (c) seek a ballot of parents as to the category to which the school should be allocated.
- (5) The petition must be received by or on behalf of the governing body on or before the date which is thirty-five school days following the date of the meeting at which the governing body took their preliminary decision.
- (6) For the purposes of paragraph (1), “petition” includes the aggregation of any number of petitions so received where the petitions are in favour of the same category of schools in accordance with paragraph (4)(b).

7. Within three school days following the date of receipt of a petition as to the category to which the school should be allocated, the governing body shall inform the person who organised the making of the petition whether or not it meets the requirements of regulation 6.

Ballots of parents

- 8.—(1) Where a petition meets the requirements of regulation 6, a ballot of parents shall be held in accordance with regulations 9 and 10 on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17.

(2) Within five school days following the date of receipt of a petition which meets the requirements of regulation 6, the governing body of the school shall inform the persons referred to in paragraph (3) below of the preferred category for the school stated in the petition and that a ballot of parents is required to be held on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17.

(3) The persons referred to in paragraph (2) are—

- (a) the local education authority for the area in which the school is situated;
- (b) in the case of a Church school, the appropriate diocesan authority;
- (c) any person holding land on trust for the purposes of the school; and
- (d) the ballot administration company.

(4) Within the same period as is referred to in paragraph (2), the governing body of the school shall notify the ballot administration company of both the governing body's preliminary decision and the school's indicative allocation.

9.—(1) For the purposes of these Regulations a person is eligible to vote in a ballot held pursuant to regulation 8 if he is an individual who is a registered parent of a registered pupil at the school.

(2) In paragraph (1) "registered" means shown in the register kept under section 434 of the Education Act 1996 and the Education (Pupil Registration) Regulations 1995 as that register has effect on the date immediately following the end of the period of ten school days beginning with the date on which a petition which meets the requirements of regulation 6 was received by the governing body.

(3) The governing body of the school shall, after the period referred to in paragraph (2) and no later than the date immediately following the period of fifteen school days beginning with the date on which a petition meeting the requirements of regulation 6 is received by the governing body, provide the ballot administration company with the electoral list which is to be as accurate as the governing body can reasonably secure.

(4) The governing body of a school shall provide such information and give such assistance to the ballot administration company as that company may require in connection with the ballot.

10.—(1) The ballot administration company shall arrange for a secret postal ballot and shall inform those persons eligible to vote in the ballot that they are entitled to do so.

(2) The ballot papers to be sent to parents for the purpose of voting in the ballot shall include the following information—

- (a) the school's indicative allocation;
- (b) the governing body's preliminary decision;
- (c) the choice of categories of schools available in the ballot for parents to vote for in accordance with Schedule 2 to the Act and regulation 17; and
- (d) the date by which ballot papers must be returned (which shall be the end of the period of ten school days beginning with the date on which the ballot papers are sent to parents).

11.—(1) Where the number of votes cast in a ballot held in respect of a school pursuant to regulation 8 shows that more than 50 per cent. of those eligible to vote in the ballot so voted and that, of those votes cast, more than 50 per cent. are in favour of a particular category of schools in accordance with Schedule 2 to the Act and regulation 17, there shall be a result of the ballot for the purposes of these Regulations and Schedule 2 to the Act and the result shall be seen as being in favour of that category.

(2) The date when the ballot outcome is determined is the date on which the governing body receives notification of the outcome of the ballot from the ballot administration company.

12.—(1) Paragraph (3) applies where, within the period of ten school days beginning with the date on which the outcome of the ballot is determined, the Secretary of State receives a complaint about the ballot on any of the grounds referred to in paragraph (2) from any of the following—

- (a) any ten or more registered parents of registered pupils at the school;
- (b) the governing body of the school;
- (c) the local education authority for the area in which the school is situated;
- (d) in the case of a Church school, the appropriate diocesan authority; and
- (e) any person holding land on trust for the purposes of the school.

(2) The grounds referred to in paragraph (1) are the following grounds—

- (a) that any requirements of regulation 9 or 10 have been contravened in the case of a ballot held pursuant to regulation 8;
- (b) that persons other than those eligible to vote in a ballot held pursuant to regulation 8 have purported to vote in the ballot so held; or
- (c) that persons who are eligible to vote in a ballot so held had been prevented or hindered from doing so, or from doing so freely in accordance with their own opinions, by any other person.

(3) Where it appears to the Secretary of State that any of the grounds referred to in paragraph (2) apply and that voting in a ballot is likely to have been influenced to a significant extent as a result, he may by notice given to the governing body of the school and the ballot administration company—

- (a) declare the ballot void; and
- (b) require that a fresh ballot be held before such date as he may specify in the notice.

(4) Where the Secretary of State declares the ballot void and requires that a fresh ballot be held, regulations 9(1), (2) and (4), 10, 11 and this regulation shall apply to that fresh ballot as they apply in respect of the ballot so declared void.

Governing body's final decision

13.—(1) Where no ballot of parents is required under regulation 8 to be held or a school is a grant-maintained special school established in a hospital, the governing body of the school shall—

- (a) in the case of a grant-maintained school or a grant-maintained special school not established in a hospital, within the period of twenty school days beginning with the last date by which a petition can be received pursuant to regulation 6(5), or
- (b) in the case of a grant-maintained special school established in a hospital, within the period of fifty-five school days beginning with the date of the meeting at which the governing body took their preliminary decision,

take a decision (referred to as their “final decision”) confirming the governing body's preliminary decision.

(2) Where a ballot of parents has been held by virtue of regulation 8 and the result (if any) of the ballot is not to disagree with the governing body's preliminary decision, the governing body of the school shall, within the period of fifteen school days beginning with the date on which the outcome of the ballot is determined and in any event before 23rd April 1999, take a decision (referred to as their “final decision”) confirming the governing body's preliminary decision.

(3) Where a ballot of parents has been held by virtue of regulation 8 and the result of the ballot does not accord with the governing body's preliminary decision, the governing body of the school shall, within the period of fifteen school days beginning with the date on which the outcome of the ballot is determined and in any event before 23rd April 1999, reconsider the question referred to

in regulation 3(1) having regard to that ballot result and take a further decision (referred to as their “final decision”) on that question.

(4) Subject to regulation 15(1), the chairman of the governing body shall direct the clerk to the governing body as to the date for the meeting at which the governing body are to take their final decision pursuant to paragraph (1), (2) or (3), as the case may be, and the clerk shall, when convening that meeting, comply with such direction.

(5) Subject to regulation 15(1), without prejudice to their obligation under, as the case may be, paragraphs (1), (2) or (3), the governing body of a school may not hold their meeting to take their final decision unless the clerk to the governing body has given every member of the governing body at least five school days notice of that meeting; and that notice shall be given together with a copy of the agenda for the meeting which shall include the consideration of the governing body’s final decision as a specific item of business for the meeting.

14.—(1) Within the period of five school days following the date on which the final decision referred to in regulation 13 is taken, the governing body shall inform the persons referred to in paragraph (2) in writing, and notify the Secretary of State, of that final decision⁽¹⁾.

(2) The persons referred to in paragraph (1) are—

- (a) the local education authority for the area in which the school is situated; and
- (b) in the case of a Church school, the appropriate diocesan authority; and
- (c) any person holding land on trust for the purposes of the school.

(3) The governing body’s notification to the Secretary of State referred to in paragraph (1) shall give the information referred to in sub-paragraphs (a) to (e) and certify the matters referred to in sub-paragraph (f)—

- (a) the name and address of the school;
- (b) the existing and indicative category in respect of the school;
- (c) the governing body’s preliminary decision and the date of the meeting at which the governing body took that decision;
- (d) where there was a ballot required to be held pursuant to regulation 8, the category for the school which was favoured by the result (if any) of the ballot;
- (e) the final decision and the date it was taken; and
- (f) where notice of the governing body’s meeting to consider their preliminary decision was required to be given under regulation 3(3)(b), that the notice was given to the persons referred to in regulation 3(3)(b)(i) or (ii) or both as appropriate.

(4) Where the final decision or a ballot result is for a category of schools other than the school’s indicative allocation, the governing body shall provide the Secretary of State with a copy of any representations, indicating the maker of any representations, received by the clerk to the governing body in response to the notice given under regulation 3(3)(b).

(5) The governing body of a school shall inform registered parents of registered pupils at the school of the final decision taken pursuant to regulation 13—

- (a) in cases where no ballot was required to be held, on or before 1st April 1999; or

(1) By paragraph 7 of Schedule 2 to the Act, the Secretary of State is to notify the governing body of each school within paragraph 2 of the Schedule of the category to which it is allocated in accordance with that paragraph. Under that paragraph, if the final decision accords with the school’s indicative allocation and either the result (if any) of any ballot is not to disagree with that allocation or no ballot is required to be held, the school is to be allocated to the category provided for by its indicative allocation. If the final decision or the result of a ballot does not accord with the school’s indicative allocation, the school is to be allocated to such category (whether or not that provided for by its indicative allocation) as the Secretary of State may determine in conformity with these Regulations.

- (b) in cases where a ballot was required to be held, within the period of five school days following the date on which the final decision was taken.

15.—(1) The governing body of a school may delegate their function of taking the final decision referred to in, respectively, regulation 13(1) and (2) to the chairman of the governing body, but may not delegate their function of taking their preliminary decision or the final decision referred to in regulation 13(3); and, where the function of taking the final decision referred to in, respectively, regulation 13(1) and (2) is so delegated, regulation 13(4) and (5) shall not apply.

(2) The quorum for a meeting of the governing body of a school to consider their preliminary or final decision and any vote on those matters thereat shall be two-thirds (rounded up to a whole number) of the persons who are at the time members of the governing body.

16.—(1) The governing body of a school shall keep any responses to the notice given pursuant to regulation 3(3)(b) until at least 1st February 2000.

(2) The governing body of a school shall make all such responses available for inspection at the school at all reasonable times to the following persons—

- (a) registered parents of registered pupils at the school;
- (b) the local education authority in which the school is situated;
- (c) in the case of a Church school, the appropriate diocesan authority; and
- (d) any person holding land on trust for the purposes of the school.