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STATUTORY INSTRUMENTS

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**1999 No. 2262**

**EDUCATION, ENGLAND**

**The Education (New Schools) (England) Regulations 1999**

*Made* - - - - - *6th August 1999*  
*Laid before Parliament* *11th August 1999*  
*Coming into force* - - *1st September 1999*

In exercise of the powers conferred on the Secretary of State by sections 44(5) and (6), 69(5), 72, 138(7) and (8) and 144 of, and paragraphs 4, 5, 15(1) and (2) and 16 of Schedule 9, paragraph 1 of Schedule 10, paragraphs 1 and 2 of Schedule 11, and paragraph 1(5) of Schedule 12 to, the School Standards and Framework Act 1998(1) and all other enabling powers, the Secretary of State for Education and Employment hereby makes the following Regulations.

**PART I**  
**INTRODUCTION**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (New Schools) (England) Regulations 1999 and shall come into force on 1st September 1999.

(2) These Regulations apply in relation to maintained schools and proposed such schools in England.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1996 Act” means the Education Act 1996(2);

“the 1998 Act” means the School Standards and Framework Act 1998;

“additional co-opted governor” means a co-opted governor required by virtue of paragraph 15 of Schedule 9 to the 1998 Act;

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(1) 1998 c. 31; By virtue of S.I.1999/3672 the powers conferred by these provisions, except section 144, are exercisable by the Secretary of State only in relation to England. For the meaning of “prescribed” and “regulations” see section 142(1).

(2) 1996 c. 56.

“employed to work” means employed under a contract of employment or a contract for services;

“grant-maintained school” and “grant-maintained special school” have the same meanings as in the 1996 Act;

“local education authority” means the local education authority by which a maintained school or a proposed such school is, or is to be, maintained;

“maintained school” means a community, community special, voluntary, foundation or foundation special school;

“Main School Government Regulations” means the Education (School Government) (England) Regulations 1999(3);

“School Organisation Regulations” means the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999(4);

“the Second Transitional Regulations” means the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999(5).

(2) Except where the context otherwise requires, the words or expressions used in these Regulations set out in the first column of the table below have the meaning given by (or as the case may be) are to be interpreted in accordance with, the provisions referred to in the second column of that table:

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“arrangements”	section 44(1) of the 1998 Act;
“Education Action Forum”	section 11(2) of the 1998 Act;
“education action zone”	section 10(1) of the 1998 Act;
“education action zone”	section 10(1) of the 1998 Act;
“have a delegated budget” (except in Part VI)	section 49(7) of the 1998 Act;
“school opening date”	section 44(9) of the 1998 Act;
“sponsor”	paragraph 1 of Schedule 1 to the Main School Government Regulations.

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(3) Unless the context otherwise requires, any reference in these Regulations to—

- (a) a numbered Part, regulation or Schedule is a reference to the Part, regulation or Schedule in these Regulations so numbered;
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears; and
- (c) a numbered sub-paragraph is a reference to the sub-paragraph so numbered in the paragraph in which the reference appears.

### **Interpretation of “temporary governing body”**

3.—(1) Any reference in these Regulations to the temporary governing body is a reference to the temporary or transitional governing body of any school or proposed school in respect of which the provision applies (whether such body is constituted under section 44 of the 1998 Act or treated as so constituted by virtue of regulation 13 of the School Organisation Regulations or regulation 13(5)

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(3) S.I. 1999/2163.

(4) S.I. 1999/704.

(5) S.I. 1999/362.

of the Second Transitional Regulations), and any reference to a temporary governor is a reference to a member of such a temporary or transitional governing body.

(2) Unless the context otherwise requires, any reference in these Regulations to a temporary governor of a particular category shall be interpreted in accordance with Part III.

## PART II

### ARRANGEMENTS FOR THE COMPOSITION OF TEMPORARY GOVERNING BODIES

#### **Application of Part II**

4.—(1) This Part—

- (a) except for regulation 8, shall not apply in any case to which regulation 13 of the School Organisation Regulations applies;
- (b) shall not apply in any case to which regulation 13 of the Second Transitional Regulations applies.

(2) In this Part, any reference (however framed) to proposals published under section 28 or 31 of the 1998 Act to establish a school shall include proposals which have been published or notice of which has been served under the 1996 Act before 1st September 1999 and to which regulation 8 (approval of proposals published before 1st September 1999 to establish a new school) of the School Organisation Regulations applies.

#### **Arrangements made in anticipation of approval of proposals**

5.—(1) Where any proposals to establish a school have been published under section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act the local education authority may make arrangements (which shall be treated for the purposes of the 1988 Act as if made under section 44(1) of that Act) in anticipation of approval of the proposals under paragraph 3 of Schedule 6 or paragraph 8 or 9 of Schedule 7 to that Act or, as the case may be, the determination by the authority under paragraph 4 of Schedule 6 to that Act that they should be implemented.

(2) If the proposals are published under section 28(2)(a) of the 1998 Act and are proposals to establish a voluntary controlled school, the local education authority shall consult the promoters—

- (a) as to whether the power given to the local education authority in paragraph (1) above should be exercised; and
- (b) if the local education authority propose to exercise it, as to the date on which the arrangements should be made.

(3) If the proposals are published under section 28(2)(a) of the 1998 Act and the proposals are to establish a voluntary aided or foundation school, the local education authority and the promoters shall consider—

- (a) whether the power given to the local education authority in paragraph (1) above should be exercised, and
- (b) where they agree that it should, on what date the arrangements should be made.

(4) Where in a case falling within paragraph (3) the local education authority and the promoters fail to agree on the question mentioned in sub-paragraph (a) or on that mentioned in sub-paragraph (b), either of them may refer the matter to the Secretary of State and on a reference under this paragraph the Secretary of State shall give such direction as he thinks fit.

### **Agreements necessary for arrangements**

6.—(1) Where proposals to establish a foundation or a voluntary school school have been published by promoters under section 28(2)(a) of the 1998 Act a local education authority shall not make arrangements in respect of the school without the agreement of the promoters as to any provision which will be made in relation to the temporary foundation governors.

(2) In the event of any disagreement between the local education authority and the promoters in respect of the provision referred to in paragraph (1), either of them may refer the matter to the Secretary of State, and on a reference under this paragraph the Secretary of State shall give such direction as he thinks fit.

### **Termination of arrangements**

7. Any arrangements made in relation to a proposed school under section 44(1) of the 1998 Act (including any arrangements treated as so made by regulation 5(1)) shall come to an end if—

- (a) the proposals are withdrawn;
- (b) the proposals are rejected under paragraph 3 of Schedule 6 or paragraph 9 of Schedule 7 to the 1998 Act;
- (c) (in the case of proposals published by a local education authority) the local education authority determine under paragraph 4 of Schedule 6 to the 1998 Act not to implement them; or
- (d) the school organisation committee or, as the case may be, the adjudicator determines under paragraph 5(3) of Schedule 6 to the 1998 Act that paragraph 5(1) of that Schedule should cease to apply to the proposals.

### **Termination of arrangements: transitional provisions**

8.—(1) This regulation applies where—

- (a) an arrangement has been made before 1st September 1999 under section 96(3) or 97(2) of the 1996 Act in anticipation of approval of proposals; and
- (b) regulation 13 of the School Organisation Regulations applies in relation to the temporary governing body constituted by the arrangement.

(2) Where this regulation applies—

- (a) sections 96(4) or 97(7) of the 1996 Act shall continue to apply in relation to the termination of the arrangement; and
- (b) the arrangement shall also come to an end if the school organisation committee or, as the case may be, the adjudicator determines under paragraph 5(3) of Schedule 6 to the 1998 Act that paragraph 5(1) of that Schedule should cease to apply to the proposals.

## **PART III**

### **COMPOSITION OF TEMPORARY GOVERNING BODIES**

#### **Interpretation**

9. In this Part—

“new school” has the meaning in section 72(3) of the 1998 Act and shall not include any school or proposed school to which regulation 13 of the School Organisation Regulations or regulation 13 of the Second Transitional Regulations applies;

“relevant paragraphs” has the meaning in regulation 10(1);

“temporary co-opted governor” means a person who is appointed to be a member of the temporary governing body of a new school by being co-opted by members of the temporary governing body who are not themselves temporary co-opted governors and includes a governor referred to in regulation 18, 19 or 20 but not a temporary teacher governor or a temporary staff governor;

“temporary foundation governor” means a person appointed to be a member of the temporary governing body of a new school otherwise than by a local education authority, in accordance with the arrangements,<sup>(6)</sup> and, where applicable in accordance with regulation 11;

“temporary LEA governor” means a person appointed to be a member of the temporary governing body of a new school by the local education authority;

“temporary parent governor” means a person appointed to be a member of the temporary governing body of a new school in accordance with regulation 12;

“temporary partnership governor” means a person appointed to be a member of the temporary governing body of a new school in accordance with regulation 13(7);

“temporary staff governor” means a person appointed to be a member of the temporary governing body of a new school in accordance with regulation 14;

“temporary teacher governor” means a person appointed to be a member of the temporary governing body of a new school in accordance with regulation 15.

### **Constitution of the temporary governing body**

**10.**—(1) Subject to this Part, the temporary governing body of a new school shall be constituted in accordance with such of paragraphs 9 to 14 of Schedule 9 to the 1998 Act (“the relevant paragraphs”) as shall apply to the new school for the purposes of the constitution of the permanent governing body.

(2) For the purposes of paragraph (1), the relevant paragraphs shall apply with the following modifications—

- (a) the expressions “co-opted governor”, “foundation governor”, “LEA governor”, “parent governor”, “partnership governor”, “staff governor” and “teacher governor” shall be treated as references to the corresponding category of temporary governor within the meaning of regulation;
- (b) references in the relevant paragraphs to “governing body” or “governors” shall be treated as references to “temporary governing body” or “temporary governors”, as the case may be;
- (c) references in the relevant paragraphs to “a representative governor” shall be treated as references to a temporary representative governor;
- (d) references in the relevant paragraphs to “additional governors required by virtue of paragraph 15” shall be treated as references to temporary co-opted governors required by regulation 18, 19 or 20;
- (e) references to a school or a school of any category or description, shall include a proposed school or a proposed school of that category or description, as the case may be;
- (f) references to a school being established in a hospital (or not established in a hospital) shall include a reference to a school which it is proposed to establish in a hospital (or otherwise than in a hospital);

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<sup>(6)</sup> See regulation 6.

<sup>(7)</sup> The effect of this Part, read together with Schedule 9 to the 1998 Act is that temporary partnership governors are required instead of temporary foundation governors at a new foundation or foundation special school which does not have a foundation.

- (g) the reference in paragraph 10(6)(a) of Schedule 9 to the 1988 Act to “matters in respect of which the school is specially organised” shall be treated as a reference to matters in respect of which the proposed school will be specially organised;
- (h) paragraph 14(4) of Schedule 9 to the 1988 Act shall not apply;
- (i) in relation to the constitution of the temporary governing body of a new school, the new school shall be treated as having as registered pupils the number of pupils determined from the proposals for the establishment of the school.

### **Temporary foundation governors**

11.—(1) Where a new school has, or the proposals for its establishment indicate that it will have, a particular religious character, any temporary foundation governor shall be appointed for the purpose of securing that that character is established and developed.

- (2) Where a new school has or will have a trust deed, any temporary foundation governor shall be appointed for the purpose of securing that the new school is established and conducted in accordance with that deed.

### **Temporary parent governors**

12.—(1) Subject to the following paragraphs of this regulation—

- (a) where a new school is or will be a community, voluntary controlled, community special or foundation special, or a foundation school proposals for the establishment of which were published by a local education authority, any temporary parent governor shall be appointed by the local education authority; and
- (b) where a new school is or will be a voluntary aided school, or a foundation school proposals for the establishment of which were published by promoters, any temporary parent governor shall be appointed by the promoters.

(2) Where a or more maintained schools have been, or are to be, discontinued (“the discontinued schools”), and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to a new school—

- (a) the local education authority, where the new school is, or will be a community, community special, voluntary controlled school or foundation special school, or a foundation school proposals for the establishment of which were published by a local education authority; or
- (b) the promoters, where the new school is or will be a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters,

may provide for the governing body of the discontinued school (or, as the case may be, any of the governing bodies of the discontinued schools) to appoint some or all of the temporary parent governors of the new school.

(3) No person shall be appointed as a temporary parent governor of a voluntary controlled school by a local education authority, and no provision referred to in paragraph (2) above shall be made in respect of a voluntary controlled school, unless the local education authority has first consulted the promoters.

(4) Subject to paragraph (5), no person shall be appointed as a temporary parent governor of a new school unless—

- (a) he is the parent of a child who is or is likely to become a registered pupil at the school; or
- (b) where it is not reasonably practicable to appoint such a person, he is the parent of a child of compulsory school age.

- (a) (5) (a) No person shall be appointed as a temporary parent governor of a school which is or will be a community or foundation special school not established in a hospital unless he is—
- (i) the parent of a child who is or is likely to become a registered pupil at the school; or
  - (ii) a person who is the parent of a child of compulsory school age with special educational needs; or
  - (iii) a person who is a parent of a person of any age with special educational needs; or
  - (iv) a person who is the parent of a child of compulsory school age.
- (b) A person referred to in sub-paragraph (ii), (iii) or (iv) shall only be appointed if it is not reasonably practicable to appoint a person referred to in the provision in that sub-paragraph which immediately precedes it.

### **Temporary partnership governors**

13.—(1) In the case of a new school proposals for the establishment of which were published by a local education authority, any temporary partnership governor shall be appointed by the local education authority.

(2) Subject to paragraph (1), any temporary partnership governor shall be a person nominated as such by the promoters and appointed as such by the local education authority.

(3) No person shall appoint, or nominate a person for appointment as, a temporary partnership governor unless he is satisfied that the nominee or the appointee appears to be—

- (a) from the community which the new school serves or will serve; and
- (b) committed to the good government and success of the school.

### **Temporary staff governors**

14.—(1) Subject to paragraph (2), any temporary staff governor shall be co-opted as such by a resolution passed at a meeting of those temporary governors who are not themselves temporary co-opted governors.

(2) In the case of a new school which is or will be a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters, a person shall not be co-opted under paragraph (1) unless he has been nominated for appointment as a temporary staff governor by the promoters.

(3) No person shall be nominated or appointed as a temporary staff governor unless he is employed to work (otherwise than as a teacher) at a school maintained by a local education authority.

### **Temporary teacher governors**

15.—(1) Subject to the following paragraphs of this regulation, a temporary teacher governor shall be co-opted as such by a resolution passed at a meeting of those temporary governors who are not themselves temporary co-opted governors.

(2) In the case of a new school which is or will be a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters, a person shall not be co-opted under paragraph (1) unless he has been nominated for appointment as a temporary teacher governor by the promoters.

(3) Where one or more maintained schools have been, or are to be, discontinued (“the discontinued schools”) and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to a new school—

- (a) the local education authority, where the new school is, or will be, a community, community special, voluntary controlled or foundation special school, or a foundation school proposals for the establishment of which were published by a local education authority; or
- (b) the promoters, where the new school is, or will be, a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters,

may provide for the governing body of the discontinued school (or, as the case may be, any of the governing bodies of the discontinued schools) to appoint some or all of the temporary teacher governors of the new school.

(4) No provision referred to in paragraph (3) above shall be made in respect of a voluntary controlled school unless the local education authority has first consulted the promoters.

(5) No person shall be nominated or appointed as a temporary teacher governor unless he is employed to work as a teacher at a school maintained by a local education authority.

#### **Matters relating to the head teacher as a temporary governor**

**16.**—(1) The head teacher may become a member of the temporary governing body by notifying the local education authority in writing at any time after his appointment as head teacher that he wishes to act as a temporary governor.

- (2) Having done so, the head teacher shall be treated as an ex officio member of the temporary governing body<sup>(8)</sup>.

#### **Size of the governing body**

**17.**—(1) Subject to paragraph (2), wherever the relevant paragraphs provide a discretion as to the number of governors of a particular category to be included on the governing body, the number of temporary governors of the corresponding category included on the temporary governing body shall be the lower number permitted under the relevant paragraphs.

(2) In the case of any new school treated by virtue of regulation (10(2)(i) as having less than one hundred pupils, or any new school which is or will be a community or foundation school—

- (a) the local education authority, where the new school is or will be a community, community special, voluntary controlled or foundation special school, or a foundation school proposals for the establishment of which were published by a local education authority; or
- (b) the promoters, where the new school is or will be a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters,

shall determine whether a temporary staff governor should be included on the temporary governing body of the new school.

(3) For the purposes of calculating the number of temporary foundation governors required at a voluntary aided school under the relevant paragraphs, it shall be assumed that a head teacher has been appointed and is a member of the temporary governing body.

#### **Temporary co-opted governors nominated by sponsors**

**18.**—(1) This regulation applies if the instrument of government made for a new school pursuant to regulation 31 provides for the permanent governing body to include one or more (in this regulation referred to as “the relevant number of”) co-opted governors for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.

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(8) Regulation 25 does not permit the head teacher to resign as a temporary governor.



(2) If this regulation applies, those members of the temporary governing body who are not themselves temporary co-opted governors shall appoint, in addition to the temporary governors otherwise required by this Part, the relevant number of temporary co-opted governors nominated by any one or more sponsors of the new school.

#### **Temporary co-opted governor nominated by an Education Action Forum**

19. If the instrument of government made for a new school pursuant to regulation 31 provides for the permanent governing body to include a co-opted governor for whose appointment nominations are to be sought from an Education Action Forum, those members of the temporary governing body who are not themselves temporary co-opted governors shall appoint, in addition to the temporary governors otherwise required by this Part, a temporary co-opted governor nominated by the Education Action Forum.

#### **Temporary co-opted governor nominated by one or more minor authorities**

20.—(1) This regulation applies if the instrument of government made, or to be made, for a new school pursuant to regulation 31 is required by paragraph 15 of Schedule 9 to the 1998 Act to provide for a co-opted governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.

(2) If this regulation applies, those members of the temporary governing body who are not themselves temporary co-opted governors shall appoint, in addition to the temporary governors otherwise required by this Part, a temporary co-opted governor nominated by the minor authority (or, as the case may be, by one or more of the minor authorities) for the area which it appears to the local education authority will be served by the new school when it is a maintained school.

#### **Requirement in appointing all temporary governors**

21.—(1) Where any person is nominating or appointing a person as a temporary governor of a new school, he shall have regard to the desirability of that person being suitably experienced.

(2) For the purposes of paragraph (1) a person is suitably experienced—

- (a) if he has served as a governor or temporary governor of a school maintained by a local education authority or a grant-maintained school or grant-maintained special school, and
- (b) in particular in a case where registered pupils at another such school which has been, or is to be, discontinued are expected to transfer to the new school, if he has served as a governor or temporary governor of that other school.

#### **Joint appointments**

22.—(1) If—

- (a) a temporary governor is to be appointed by persons acting jointly, and
- (b) those persons fail to make an agreed appointment,

the appointment shall be made by, or in accordance with a direction given by, the Secretary of State.

## PART IV

### TEMPORARY GOVERNING BODIES: QUALIFICATIONS, TENURE OF OFFICE AND MISCELLANEOUS

#### Interpretation of Part IV

**23.** In this Part, “new school” has the meaning in section 72(3) of the 1998 Act and, unless the contrary intention appears, shall not include any school or proposed school to which regulation 13 of the School Organisation Regulations or regulation 13 of the Second Transitional Regulations applies.

#### Qualifications and disqualifications

**24.**—(1) Schedule 5 to the Main School Government Regulations applies, with the modifications set out in paragraph (2), for the purpose of setting out the circumstances in which a person is qualified or disqualified for holding or continuing in office, or for being appointed or nominated, as a temporary governor of a new school<sup>(9)</sup>.

(2) For the purposes of paragraph (1), Schedule 5 to the Main School Government Regulations shall apply with the following modifications—

(a) there shall be inserted at the beginning—

““This Schedule applies to new schools and temporary governing bodies in relation to which regulation 24(1) of the Education (New Schools) (England) Regulations 1999 applies, and any reference in this Schedule to a temporary governor of a particular category is a reference to a governor of that category within the meaning of Part III of those regulations.”;”

(b) there shall be substituted—

(i) for references to “school”, “new school” (except in the second and third place where “school” occurs in paragraph 9, in both places where “school” occurs in paragraph 10(7) and in paragraph 13(c));

(ii) except in paragraph 13(c), for references to “governing body”, “governor” or “governorship”, “temporary governing body”, “temporary governor”, or “temporary governor ship”, as the case may be;

(iii) for references to a particular category of governor, references to a temporary governor of the corresponding category, within the meaning of Part III of these Regulations and for the reference to an additional co-opted governor a reference to any temporary co-opted governor referred to in regulation 18, 19 or 20 of these Regulations;

(iv) for paragraph 1(3)—

“(3) Subject to paragraphs 12 and 15, the fact that a person is qualified for appointment as a temporary governor of a particular category at a new school does not disqualify him for appointment, or for continuing as a temporary governor of any other category at that school.”;

(v) for paragraph 14—

“**14.** A person shall not be disqualified for continuing to hold office as a temporary parent governor when he ceases to be a parent of a child who is or is likely to become a registered pupil at the school or ceases to fulfil any of

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(9) See regulation 23. This regulation does not apply to transitional governing bodies referred to in regulation 13 of the Second Transitional Regulations or temporary governing bodies referred to in regulation 13 of the School Organisation Regulations. Disqualification requirements for members of such governing bodies follow the 1996 Act.

the requirements of regulation 12 of the Education (New Schools) (England) Regulations 1999.”;

(vi) for paragraph 16—

“16. A temporary teacher governor or a temporary staff governor at a new school shall, upon ceasing to be employed to work at a maintained school, be disqualified for continuing to hold office as such a governor.”;

(c) paragraphs 3, 4 and paragraph 10(2) shall not apply;

(d) there shall be omitted the words “election or” and “or election” wherever they occur.

### **Resignation and removal**

**25.**—(1) Any member of a temporary governing body, other than a head teacher, may at any time resign his office in the same way as a member of a permanent governing body under regulations 17 and 20 of the Main School Government Regulations.

(2) Any temporary governor of a new school who was appointed otherwise than by being co-opted may be removed from office by the person or persons who appointed him.

(3) The power of removal in paragraph (2) does not apply in respect of a temporary partnership governor.

(4) Regulations 18(4) and 19 of the Main School Government Regulations apply to the removal by the temporary governing body of—

(a) a temporary co-opted governor (other than a temporary cvo-opted governor referred to in regulation 18, 19 or 20); or

(b) a temporary Staff governor or a temporary teacher governor, unless such a governor was nominated for appointment by the promoters.

as they apply to the removal of a co-opted governor.

(5) Regulations 18(3) and 19 of the Main School Government Regulations apply to the removal by the temporary governing body of—

(a) a temporary co-opted governor referred to in regulation 18, 19 or 20;

(b) a temporary staff governor or a temporary teacher governor nominated for appointment by the promoters,

as they apply to the removal of an additional co-opted governor.

(6) Paragraphs (1) and (2) also apply to members of a transitional governing body referred to in regulation 13 of the Second Transitional Regulations and to members of a temporary governing body referred to in regulation 13 of the School Organisation Regulations, except that in paragraph (1) for these purposes the words “other than a head teacher” shall not apply.

### **First meeting**

**26.**—(1) The first meeting of a temporary governing body<sup>(10)</sup> shall be called by their clerk.

(2) Where the clerk fails to call the first meeting within such period as the local education authority consider reasonable, the local education authority shall call it.

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<sup>(10)</sup> Provisions relating to meetings and proceedings of temporary governing bodies, and clerks to temporary governing bodies, are in the Main School Government Regulations.

### **Expenses**

27. Where a temporary governing body are constituted for a new school, the local education authority shall be under the same duty to defray the expenses incurred in relation to the temporary governing body as they would be if the relevant proposals had been implemented and the temporary governing body were the governing body of the school.

### **Explanatory information**

28. A local education authority shall secure that the temporary governing body of a new school are, on being constituted, provided (free of charge) with such explanatory and other information as the authority consider is required to enable the temporary governing body to discharge their functions effectively.

### **Application of regulations 26, 27 and 28**

29. Regulations 26, 27, and 28 also apply to members of a transitional governing body referred to in regulation 13 of the Second Transitional Regulations and to members of a temporary governing body referred to in regulation 13 of the School Organisation Regulations.

## **PART V**

### **TRANSITION FROM A TEMPORARY GOVERNING BODY TO A PERMANENT GOVERNING BODY**

#### **Interpretation of Part V**

30. In this Part “new school” has the meaning in section 72(3) of the 1998 Act and shall include any school or proposed school to which Part II of the School Organisation Regulations applies but not any school or proposed school to which regulation 13 of the Second Transitional Regulations applies<sup>(11)</sup>.

#### **Making of instrument of government**

31.—(1) The local education authority shall secure that an instrument of government has been made for each new school in accordance with Schedule 12 to the 1998 Act<sup>(12)</sup> before the school opening date.

(2) The instrument of government shall take effect from the date of making for the purpose of constituting the governing body but shall not affect the constitution or name of the temporary governing body conducting the new school pending constitution of the permanent governing body under the instrument of government.

(3) For all other purposes, the instrument of government shall take effect from the school opening date.

(4) The temporary governing body shall exercise their functions under the 1998 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under this regulation.

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(11) This Part does not apply to schools with transitional governing bodies within the meaning in regulation 13 of the Second Transitional Regulations because constitution of permanent governing bodies under instruments of government for such schools is dealt with in the Second Transitional Regulations.

(12) As modified by regulation 32 of these Regulations.

## Modifications to the 1998 Act

32.—(1) Section 141 of, and Schedules 9 and 12 to, the 1998 Act shall apply with the following modifications to enable the instrument of government for a new school to be made.

(2) In section 141 of, and paragraph 15 of Schedule 9 to, the 1998 Act, references to the area served by a school (however expressed) shall be treated as references to the area which it appears to the local education authority will be served by the new school when it is a maintained school.

(3) In relation to a new school which will be a community special school not established in a hospital, paragraph 10 of Schedule 9 to the 1998 Act shall apply as if there were substituted for sub-paragraph (6)(a) the following—

“(a) if a voluntary organisation is designated by the local education authority, in relation to the proposed school which will be a community special school, as the appropriate voluntary organisation concerned with matters in respect of which the community special school will be specially organised, a representative governor shall be appointed by that organisation; or”.

(4) In paragraph 15(1) of Schedule 9 to the 1998 Act, the reference to “If the governing body of any maintained school so determine”, shall be treated as if it were a reference to “If the temporary governing body of any proposed school so determine”.

(5) Paragraph 1 of Schedule 12 to the 1998 Act shall have effect as if—

(a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with paragraph (2A), the dates”;

(b) after sub-paragraph (2) there were inserted the following sub-paragraph—

“(2A) Where an instrument of government is made for a proposed school, such instrument of government:

(a) shall determine the constitution of the governing body and other matters relating to the proposed school as a maintained school of the category to which it will belong when it opens;

(b) shall include a description of the ethos of the school, if the proposed school will be a foundation or voluntary school having a religious character<sup>(13)</sup>;

(c) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the temporary governing body conducting the proposed school or school pending constitution of the permanent governing body under the instrument of government; and

(d) for all other purposes, shall take effect from the school opening date.”; and

(c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a proposed school referred to in sub-paragraph (2A), the proposed school shall be treated as having as registered pupils the number of pupils determined from the proposals for the establishment of the school.”.

(6) References in paragraph 3 of Schedule 12 to the 1998 Act to—

(a) “the governing body” shall be treated as references to the temporary governing body;

(b) “foundation governors” shall be treated as references to temporary foundation governors (within the meaning of Part III of these Regulations, or, in the case of a proposed school to

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<sup>(13)</sup> Regulation 9 of *S./I. 1998/2535* makes provision for the religious character of 13 proposed schools to be designated under section 69(3) of the 1998 Act. Regulation 9 is amended by Part VIII.

which regulation 13 of the School Organisation Regulations applies, governors who were appointed as temporary foundation governors under the 1996 Act);

- (c) “the school” shall be treated as references to the new school;
- (d) “Church of England” and “Roman Catholic” school shall be treated as references to new schools which will be such schools when they open;
- (e) “the appropriate diocesan authority” shall be treated as references to the authority which will be the appropriate diocesan authority when the new school opens; and
- (f) “the category of school to which the school belongs” shall be treated as references to the category of school to which the new school will belong when it opens.

### **Additional co-opted governors**

**33.**—(1) Schedule 1 to the Main School Government Regulations shall apply with the modifications set out in paragraph (2) below for the purpose of making provision for the number of additional co-opted governors which may be required by the instrument of government for a new school by virtue of paragraph 15(1) and (2) of Schedule 9 to the 1998 Act, for the circumstances in which provision for such governors is authorised to be made, and the categories of person from whom or from amongst whose members nominations for such appointments are to be sought.

(2) For the purpose of paragraph (1) above, Schedule 1 to the Main School Government Regulations shall apply with the following modifications—

- (a) references to “school” shall be treated as references to the new school;
- (b) references to “the governing body” (without more) shall be treated as references to the temporary governing body; and
- (c) references to “the governing body of the school” shall be treated as references to the permanent governing body.

### **Substitutes for ex officio foundation governors**

**34.** The instrument of government for a new school shall name the person or persons who shall be entitled to appoint a foundation governor to act in the place of an ex officio foundation governor in any case where—

- (a) that ex officio foundation governor is unable or unwilling to act as such, or
- (b) there is a vacancy in the office by virtue of which such a governorship exists.

### **Instrument of government**

**35.**—(1) The instrument of government for a new school shall be made in the form and in accordance with the directions set out in the Schedule which are relevant to the category of maintained school to which the new school will belong when it opens.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in the Schedule.

### **Constitution of the governing body under the instrument of government**

**36.**—(1) For the purposes of this Part, in relation to any new school, the incorporation date means such date (as soon as reasonably practicable after the school opening date and in any event no later than the last day of the term in which the school first admits pupils) as the local education authority shall notify in writing to the temporary governing body.

(2) The local education authority shall secure that appointments or elections of governors required by the instrument of government for a new school take place in accordance with that instrument before the incorporation date with effect from that date.(14)

(3) On the incorporation date the governing body of a new school shall be constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act.

(4) The temporary governing body shall exercise their functions under the 1998 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under these Regulations and under section 44(3) of the 1998 Act.

### **New governors**

**37.**—(1) In the case of the appointment of any governor referred to in regulation 36(2), the local education authority shall give written notice to the person who is to make the appointment under the instrument of government, unless that person has already notified them of an appointment to fill the vacancy.

(2) Where any person makes an appointment referred to in paragraph (1), they shall give written notice of the appointment to the local education authority and to the clerk to the temporary governing body, specifying the name and usual place of residence of the person appointed.

(3) The head teacher will be a governor from the incorporation date unless (before the instrument of government is made) he has given written notice to the local education authority and to the clerk to the temporary governing body that he chooses not to be a governor from that date.

(4) Paragraph (3) is without prejudice to the head teacher’s right after the incorporation date to give written notice to the clerk to the governing body to the effect that he chooses to be or not to be a governor.

### **Appointment or election of new governors**

**38.**—(1) The following paragraphs shall apply in relation to the appointment or election of governors referred to in regulation 36(2).

(2) In paragraph 3, “temporary co-opted governor” has the meaning in Part III of these Regulations, or, in the case of a school to which regulation 13 of the School Organisation Regulations applies, means a governor who was appointed as a temporary co-opted governor under the 1996 Act.

(3) Any co-opted governor shall be appointed by members of the temporary governing body, who are not themselves temporary co-opted governors.

- (a) (4) (a) Any parent governor shall be either—
  - (i) elected (after the school’s opening date) by parents of registered pupils at the new school and himself such a parent at the time when he is elected; or
  - (ii) appointed (after the school opening date) as a parent governor by the temporary governing body in the circumstances and subject to the provisions set out in Schedule 2 to the Main School Government Regulations (which shall apply for these purposes subject to the modifications in sub-paragraph (b)).
- (b) For the purposes set out in sub-paragraph (a)(ii), Schedule 2 to the Main School Government Regulations shall apply as if—
  - (i) references in that Schedule to the governing body were references to the temporary governing body;

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(14) The Main School Government Regulations provide for qualifications and disqualifications for office, and terms of office, of such governors.

- (ii) Schedule 4 to those Regulations had been amended pursuant to regulation 40 of these Regulations.
- (a) (5) (a) Any partnership governor shall be a person who (after the school opening date) is nominated as a partnership governor, and appointed as such, in accordance with Schedule 3 to the Main School Government Regulations (which shall apply for these purposes subject to the modifications in sub-paragraph (b)).
- (b) For the purposes set out in sub-paragraph (a), Schedule 3 to the Main School Government Regulations shall apply as if references in that Schedule to the governing body were references to the temporary governing body.
- (6) Any staff governor shall be elected (after the school opening date) by persons employed to work at the new school otherwise than as teachers, and shall himself be a person so employed at the time when he is elected.
- (7) Any teacher governor shall be:
- (a) a person elected (after the school's opening date) by teachers at the new school; and
- (b) such a teacher at the time when he is elected,
- and for this purpose "teacher" means a teacher employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher.

### **Joint appointments**

#### **39. If—**

- (a) the instrument of government for a new school provides for one or more governors to be appointed by persons acting jointly, and
- (b) for references to a school there shall be substituted references to a new school; and
- (c) those persons fail to make an agreed appointment,

the appointment shall be made by, or in accordance with a direction given by, the Secretary of State.

### **Elections**

**40.** Schedule 4 to the Main School Government Regulations applies in relation to the election of governors referred to in regulation 36(2), except that in that Schedule—

- (a) references to a community, community special, voluntary controlled, voluntary aided, foundation or foundation special school include new schools which will be such schools when they open; and
- (b) for references to the governing body there shall be substituted references to the temporary governing body.

### **Information for successors**

**41.—**(1) Immediately before the incorporation date, the temporary governing body shall prepare, for the purpose of assisting the governing body who will succeed them, a brief report of the action which they have taken in the discharge of their functions relating to the new school.

(2) All minutes and papers of a temporary governing body relating to the new school, including the report prepared under paragraph (1), shall be made available to their successors.



### **Property, rights and liabilities**

**42.** On the incorporation date—

- (a) all land and other property which, immediately before the incorporation date, was property of the temporary governing body used or held for the purposes of the new school, and
- (b) all rights and liabilities of the temporary governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this regulation, vest in the governing body constituted under the instrument of government.

### **Rights and liabilities under contract of employment**

**43.** Without prejudice to the generality of regulation 42, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract shall have effect from the incorporation date as if originally made between the employee and the incorporated governing body, and
- (b) without prejudice to sub-paragraph (a) above, anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the incorporated governing body,

but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by that regulation.

### **Registered land and construction of agreements**

**44.—(1)** Where a transfer under regulation 42 relates to registered land, it shall be the duty of the persons who were members of the temporary governing body immediately before the incorporation date—

- (a) to execute any such instrument under the Land Registration Acts 1925 to 1997<sup>(15)</sup>,
- (b) to deliver any such certificates under those Acts, and
- (c) to do such other things under those Acts;

as they would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Paragraphs 6 to 8 of Schedule 10 to the Education Reform Act 1988<sup>(16)</sup> (construction of agreements) shall apply in relation to transfers effected by regulation 42 as they apply in relation to transfers to which that Schedule applies.

## **PART VI**

### **STAFFING OF NEW SCHOOLS**

#### **Interpretation of Part VI**

**45.** In this Part—

- (a) “proposed school” means a proposed school (that is to say, one which has not yet opened) for which there is a temporary governing body constituted under section 44 of the 1998

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<sup>(15)</sup> 1925 c. 21, 1936 c. 26, 1966 c. 39, 1971 c. 54, 1986 c. 26, 1988 c. 3 and 1997 c. 2.

<sup>(16)</sup> 1988 c. 40.

Act, a transitional governing body treated as so constituted by virtue of regulation 13(5) of the Second Transitional Regulations, or a temporary governing body treated as so constituted by virtue of regulation 13 of the School Organisation Regulations; and

- (b) a reference to a numbered section or Schedule is to a numbered section of or Schedule to the 1998 Act.

#### **Proposed schools with delegated budgets**

**46.**—(1) In this Part a reference, however framed, to a proposed school of a particular category or description having a delegated budget is a reference to such a proposed school in relation to which neither sub-paragraph (a) nor (b) of paragraph (2) apply.

(2) In this Part a reference, however framed, to a proposed school of a particular category or description without a delegated budget is a reference to such a proposed school in relation to which—

- (a) the local education authority or the Secretary of State have made a determination under section 49(3)(b) or (c) that the school shall have a delegated budget as from a date later than the school opening date; or
- (b) the temporary governing body’s right to a delegated budget is suspended.

#### **Proposed schools with a religious character**

**47.** In this Part, a reference, however framed, to a proposed school of a particular category or description having a religious character is to a proposed school designated under section 69(3)(17) as a school having a religious character when it opens, and a reference, however framed, to a proposed school of a particular category or description not having a religious character shall be construed accordingly.

#### **Modification of staffing provisions in the 1998 Act**

**48.** For the purposes of the application, in accordance with this Part, of provisions of the 1998 Act in relation to proposed schools—

- (a) a reference to the governing body of a school is a reference to the temporary governing body of a proposed school, and includes a transitional governing body which under regulation 13(5) of the Second Transitional Regulations is treated as a temporary governing body and a temporary governing body referred to in regulation 13 of the School Organisation Regulations;
- (b) a reference to a “foundation governor” is a reference to—
- (i) a temporary foundation governor within the meaning of Part III of these Regulations, or
- (ii) a member of a temporary governing body who was when appointed a temporary foundation governor within the meaning of the 1996 Act,
- as the case may be;
- (c) a reference, however framed, to a school of a particular category or description is a reference to a proposed school which will be a school of that category or description;
- (d) a reference to the local education authority is a reference to the local education authority by which the proposed school is, or is to be, maintained; and
- (e) a reference, however framed, to a school (either of a particular category or description, or without qualification) which has a religious character is a reference to a proposed school

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(17) Regulation 9 of S.I. 1998/2535 makes provision for the religious character of proposed schools to be designated under section 69(3).

designated under section 69(3) as a school having a religious character when it opens, and a reference, however framed, to a school (either of a particular category or description, or without qualification) which does not have a religious character shall be construed accordingly.

**Staffing of proposed schools which will be community, voluntary controlled or community special schools having delegated budgets**

**49.**—(1) This regulation applies in relation to a proposed school which will be a community, voluntary controlled or community special school having a delegated budget (within the meaning of regulation 46(1)).

(2) Subject to paragraphs (3) and (4), sections 56 and 59, Schedule 16, and regulations under paragraph 30 of Schedule 16 shall apply in relation to—

- (a) the appointment of staff at such a school; and
- (b) the taking of such steps with respect to any other matters referred to in those provisions as may be appropriate in preparation for the conduct of the school on and after the school opening date.

(3) Sections 58(2) to (6) and (9) and 60 shall apply in relation to a proposed school which will be a voluntary controlled school having a religious character.

(4) In relation to reserved teachers at a proposed school which will be a voluntary controlled school, Schedule 16 shall have effect subject to section 58(2) to (6) and (9).

**Staffing of proposed schools which will be foundation, voluntary aided or foundation special schools having delegated budgets**

**50.**—(1) This regulation applies in relation to a proposed school which will be a foundation, voluntary aided or foundation special school having a delegated budget (within the meaning of regulation 46(1)).

(2) Subject to paragraph (3), section 56, Schedule 17, and regulations under paragraph 30 of Schedule 16 which apply in relation to foundation, voluntary aided and foundation special schools by virtue of paragraph 27(3) of Schedule 17 shall apply in relation to—

- (a) the appointment of staff at such a school; and
- (b) the taking of such steps with respect to any other matters referred to in those provisions as may be appropriate in preparation for the conduct of the school on and after the school opening date.

(3) Section 58(2) to (6) and (9) shall apply in relation to a proposed school which will be a foundation school having a religious character, and Schedule 17 shall have effect in relation to such a school subject to those provisions.

(4) Section 59 shall apply in relation to a proposed school which will be a foundation special school, or a foundation or voluntary aided school not having a religious character.

(5) Section 60 shall apply in relation to a proposed school which will be a foundation or voluntary aided school having a religious character, and in relation to a proposed school which will be a foundation school having a religious character section 59(2) to (4) shall apply subject to section 60.

**Staffing of proposed schools which will be community, voluntary controlled or community special schools without delegated budgets**

**51.**—(1) This regulation applies in relation to a proposed school which will be a community, voluntary controlled or community special school without a delegated budget (within the meaning of regulation 46(2)).

- (2) Subject to paragraphs (3) and (4), sections 54(3) to (5) and 59 shall apply in relation to—
- (a) the appointment of staff at such a school; and
  - (b) the taking of such steps with respect to any other matters referred to in those provisions as may be appropriate in preparation for the conduct of the school on and after the school opening date.
- (3) Sections 58(2) to (6) and (9) and 60 shall apply in relation to a proposed school which will be a voluntary controlled school having a religious character.
- (4) In relation to reserved teachers at a proposed school which will be a voluntary controlled school, section 54(4) shall have effect subject to section 58(2) to (6) and (9).

**Staffing of proposed schools which will be foundation, voluntary aided or foundation special schools without delegated budgets**

**52.**—(1) This regulation applies in relation to a proposed school which will be a foundation, voluntary aided or foundation special school without a delegated budget (within the meaning of regulation 46(2)).

- (2) Subject to paragraphs (3) and (4), section 55(3) to (7) and Schedule 17 shall apply in relation to—
- (a) the appointment of staff at such a school; and
  - (b) the taking of such steps with respect to any other matters referred to in those provisions as may be appropriate in preparation for the conduct of the school on and after the school opening date,

and Schedule 17 shall have effect subject to section 55(3) to (7).

(3) Section 58(2) to (6) and (9) shall apply in relation to a proposed school which will be a foundation school having a religious character, and section 55(4) and (5) or Schedule 17 shall have effect in relation to such a school subject to those provisions.

(4) Section 58(7) shall apply (subject to section 58(8)) in relation to a proposed school which will be a voluntary aided school having a religious character, and section 55(4) and (5) or Schedule 17 shall have effect in relation to such a school subject to that provision.

(5) Section 59 shall apply in relation to a proposed school which will be a foundation special school, or a foundation or voluntary aided school not having a religious character.

(6) Section 60 shall apply in relation to a proposed school which will be a foundation or voluntary aided school having a religious character, and in relation to a proposed school which will be a foundation school having a religious character, section 59(2) to (4) shall apply subject to section 60.

## PART VII

### GENERAL CONDUCT OF NEW SCHOOLS

**Interpretation and application of Part VII**

**53.**—(1) In this Part, “proposed school” means a proposed school (that is to say, one which has not yet opened) for which there is a temporary governing body constituted under section 44 of the 1998 Act, a transitional governing body treated as so constituted by virtue of regulation 13(5) of the Second Transitional Regulations, or a temporary governing body treated as so constituted by virtue of regulation 13 of the School Organisation Regulations.

- (2) Regulations 55 to 61 shall apply in relation to a proposed school.

(3) Regulations 54 and 56 shall apply in relation to a maintained school on and after the school opening date.

**Application of paragraph 3 of Schedule 10 to the 1998 Act on and after the school opening date**

**54.** During the period—

- (a) beginning with the school opening date; and
- (b) ending with the time when the governing body are constituted for the school under an instrument of government,

paragraph 3 of Schedule 10 to the 1998 Act shall apply to the temporary governing body of a school as if they were the governing body of the school<sup>(18)</sup>.

**Conduct of the school before the opening date**

**55.**—(1) Subject to any other statutory provision, the determination of matters relating to the conduct of a school which require to be determined in advance of the school opening date shall be under the direction of the temporary governing body and in addition the temporary governing body may, before the school opening date, do anything which appears to them to be necessary or expedient for the purposes of, or in connection with, the conduct of the school, whether before, on, or after that date.

(2) Subject to paragraphs (3) and (4), the temporary governing body of a proposed school may in particular in that connection—

- (a) borrow such sums as they think fit and, in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the temporary governing body;
- (b) acquire and dispose of land and other property;
- (c) enter into contracts;
- (d) invest any sums which they do not immediately require;
- (e) accept gifts of money, land or other property and apply it, or hold and administer it on trust, for the purposes of the school; and
- (f) do anything incidental to their functions under paragraph (1).

(3) Sub-paragraphs (3) to (7) of paragraph 3 of Schedule 10 to the 1998 Act shall apply in relation to the exercise by the temporary governing body of their powers under sub-paragraphs (1) and (2) with the following modifications—

- (a) in paragraph 3(4) the expression “maintained schools” shall be treated as a reference to proposed schools which will be maintained schools and the reference to “the local education authorities by whence those schools are maintained” shall be treated as including the local education authorities by whom any such schools will be maintained;
- (b) references in paragraph 3(6) to a particular category of school shall be treated as including a reference to a proposed school which will be a school of that category;
- (c) the reference in paragraph 3(7)(a) to any provisions of the school’s instrument of government shall be treated as a reference to any ethos statement contained in the instrument of government once made, even though not yet in force; and

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<sup>(18)</sup> Section 44(7) of the 1998 Act provides that the temporary governing body are, generally, treated as if they were the permanent governing body from the school opening date until constitution of the permanent governing body.

- (d) the reference in paragraph 3(7)(b) to the school shall be treated as including a reference to the proposed school.
- (4) The temporary governing body of a proposed school which does not have a delegated budget may not exercise any of the powers set out in paragraph (2)(b) to (f)(19) without the prior agreement, in writing, of—
- (a) the local education authority, in the case of a proposed school which will be a community, community special, voluntary controlled or foundation special school or a foundation school, proposals for the establishment of which were published by a local education authority; or
  - (b) the promoters, in the case of a proposed school which will be a voluntary aided school or a foundation school, proposals for the establishment of which were published by promoters.
- (5) Paragraph (2) of regulation 37 of the Main School Government Regulations shall be amended by the addition of the following sub-paragraph:
- “(h) the exercise by the temporary governing body of a new school having a delegated budget, of any of the specific powers set out in regulation 55(2)(a) to (e) of the Education (New Schools)(England) Regulations 1999.”.

#### **Execution of documents by the temporary governing body**

56.—(1) On and after the school opening date the temporary governing body of a school shall be known as “the temporary governing body of . . .”, with the addition of the name of the school as for the time being set out in the school’s instrument of government.

(2) Only the chairman of the temporary governing body, or, where that is not reasonably practicable, the vice-chairman, may make and issue instruments on behalf of the temporary governing body.

(3) Every document purporting to be an instrument made or issued by or on behalf of the temporary governing body and to be signed or executed by the chairman or the vice-chairman of the temporary governing body shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

#### **Preparation of the curriculum**

57.—(1) The head teacher of a proposed school shall, in preparing to discharge his functions under Part V of the 1996 Act in relation to the curriculum for the school, consult the temporary governing body and the local education authority.

(2) Any authority who have been consulted under this regulation shall inform the head teacher of the resources which are likely to be made available to the school; and the head teacher shall have regard to any information so given to him.

#### **School terms, holidays and sessions**

58.—(1) In the case of a proposed school which will be a community, voluntary controlled or community special school—

- (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end; and
- (b) the temporary governing body shall determine the times of the school sessions after consultation with the authority.

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(19) Since the power in paragraph 2(a) of this regulation is subject to the consent requirements of paragraph 3 of Schedule 10 as applied by paragraph (3) of this regulation, the power in paragraph 2(a) is not subject to the consent requirement imposed by paragraph (4) of this regulation.

(2) In the case of a proposed school which will be a foundation, voluntary aided or foundation special school, the temporary governing body shall determine—

- (a) the dates and times when the school terms and holidays are to begin and end, and
- (b) the times of the school sessions.

(3) In this regulation “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

### **Discipline**

**59.** Section 61 of the 1998 Act (responsibility for discipline) applies to a proposed school as if references to the school’s governing body were references to the temporary governing body, except that section 61(3)(b) and (7) shall not apply.

### **Reports and information**

**60.**—(1) The temporary governing body of a proposed school shall provide the local education authority with such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.

(2) The head teacher of a proposed school shall provide the temporary governing body or (as the case may be) the local education authority with such reports in connection with the discharge of his functions as that body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.

- (3) Where a requirement under paragraph (2) is imposed on the head teacher by the authority—
- (a) the authority shall notify the temporary governing body of that requirement, and
  - (b) the head teacher shall give the temporary governing body a copy of any reports made by him in complying with it.

### **Consultation on expenditure by a local education authority**

**61.** Where the proposed school does not have a delegated budget, the local education authority shall consult the temporary governing body and the head teacher on their proposed expenditure on books, equipment and stationery for the school.

## **PART VIII**

### **AMENDMENTS TO THE RELIGIOUS CHARACTER OF SCHOOLS (DESIGNATION PROCEDURE) REGULATIONS 1998**

**62.**—(1) Regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998(20) shall be amended in relation to England as set out in paragraphs (2) and (3).

(2) In paragraph (2) of regulation 9, there shall be inserted before “Church of England”, the words “new school which is intended to be a”, and for “appropriate diocesan authority” there shall be substituted “the diocesan authority which is intended to be the appropriate diocesan authority when the school opens”.

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(3) In paragraph (6)(a) of regulation 9, for “foundation governor” there shall be substituted “temporary foundation governor (within the meaning of Part III of the Education (New Schools) (England) Regulations 1999, or the Education Act 1996, as the case may be)”.

(4) In relation to proposals published before 1st September 1999, paragraph (4) of regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998 shall have effect as if—

- (a) for “section 28 of the 1998 Act”, there were substituted “section 41 of the 1996 Act”; and
- (b) after “must specify”, there were inserted the words “(however such specification may be framed)”.

6th August 1999

*Estelle Morris*  
Minister of State,  
Department for Education and Employment



SCHEDULE

INSTRUMENT OF GOVERNMENT PRO-FORMAS

PART I

INSTRUMENT OF GOVERNMENT: COMMUNITY SCHOOLS

1. The name of the school is .....
2. The school is a community school.
3. The name of the governing body is "The governing body of ....." *insert the name of the school as set out in paragraph 1. above.*
4. The governing body shall consist of:
  - a. X parent governors;
  - b. X LEA governors;
  - c. X teacher governors;  
*(if applicable)*
  - (d) one staff governor;
  - (e) X co-opted governors *(including any governors referred to in paragraph 6, 7 or 8 below)*;
  - (f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors ..... (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....).  
*(If applicable)*
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)  
*(If applicable)*
7. X co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)  
*(If applicable)*
8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.)
9. Subject to regulation 31 of the Education (New Schools) (England) Regulations 1999, this instrument of government comes into effect:
  - on the date of making for the purpose of constituting the permanent governing body;
  - for all other purposes, on *(insert the school opening date)*.
10. This instrument was made by order of ..... Local Education Authority on .....

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PART II

INSTRUMENT OF GOVERNMENT: COMMUNITY SPECIAL SCHOOLS

1. The name of the school is .....
2. The school is a community special school.
3. Then name of the governing body is "The governing body of ....." *insert the name of the school as set out in paragraph 1 above.*
4. The governing body shall consist of:
  - a. X parent governors;
  - b. X LEA governors;
  - c. X teacher governors;  
*(if applicable)*
  - (d) one staff governor;
  - (e) X co-opted governors *(including any governors referred to in paragraph 6 or 7 below);*
  - (f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor);  
*(If applicable)*
  - (g) one representative governor appointed by ..... [or ..... and ..... jointly].
5. Total number of governors ..... (except any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....).  
*(If applicable)*
6. X co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)  
*(If applicable)*
7. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).
8. Subject to regulation 31 of the Education (New Schools) (England) Regulations 1999, this instrument of government comes into effect—
  - on the date of making for the purpose of constituting the permanent governing body;
  - for all other purposes, on ..... *(insert the school opening date).*
9. This instrument was made by order of ..... Local Education Authority on .....

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PART III

INSTRUMENT OF GOVERNMENT: FOUNDATION SCHOOLS AND FOUNDATION SPECIAL SCHOOLS

1. The name of the school is .....
2. The category to which the school belongs is .....
3. The name of the governing body is "The governing body of ....." *insert the name of the school as set out in paragraph 1. above.*
4. The governing body shall consist of:
  - a. X parent governors;
  - b. X LEA governors;
  - c. X teacher governors;  
*(if applicable*
  - (d) one staff governor;  
*(if applicable*
  - (e) X foundation governors;  
*(if applicable*
  - (e) X partnership governors;)
  - (f) X co-opted governors (*including any governors referred to in paragraph 6 or 7 below*);
  - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors ..... (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....).  
*(If applicable*
6. X co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)  
*(If applicable*
7. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).  
*(Where the school is to have foundation governors*
8. *Set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which appointments are made.*  
*(If applicable*
- 9.—
  - (a) The holder of the following office shall be a foundation governor ex-officio:  
*name of office*
  - (b) ..... [*or ..... and ..... jointly*] shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.  
*Repeat 9(a) and (b) as necessary where there is more than one ex officio foundation governorship.*
10. *Set out procedure for eliminating any excess in the number of foundation governors.*
11. *If the school will have a religious character, describe the ethos of the school.*
12. Subject to regulation 31 of the Education (New Schools) (England) Regulations 1999, this instrument of government comes into effect—
  - on the date of making for the purpose of constituting the permanent governing body;
  - for all other purposes, on ..... (*insert the school opening date*).
13. This instrument was made by order of ..... Local Education Authority on .....

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PART IV

INSTRUMENT OF GOVERNMENT: VOLUNTARY CONTROLLED SCHOOLS

1. The name of the school is .....
2. The school is a voluntary controlled school.
3. The name of the governing body is "The governing body of ....." *insert the name of the school as set out in paragraph 1. above.*
4. The governing body shall consist of:
  - a. X parent governors;
  - b. X LEA governors;
  - c. X teacher governors;  
*(if applicable*
  - (d) one staff governor;
  - (e) X foundation governors;
  - (f) X co-opted governors *(including any governors referred to in paragraph 6, 7 or 8 below);*
  - (g) the head teacher, except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors ..... *(except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....).*  
*(If applicable*
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)  
*(If applicable*
7. X co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)  
*(If applicable*
8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).
9. *Set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person, set out the basis on which appointments are made.*  
*(If applicable*
- 10.—
  - (a) The holder of the following office shall be a foundation governor ex-officio:  
*name of office*
  - (b) ..... *[or ..... and ..... jointly]* shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.  
*Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.)*
11. *Set out procedure for eliminating any excess in the number of foundation governors.*
12. *If the school will have a religious character describe the ethos of the school.*
13. Subject to regulation 31 of the Education (New Schools) (England) Regulations 1999, this instrument of government comes into effect:
  - on the date of making for the purpose of constituting the permanent governing body;
  - for all other purposes, on ..... *(insert the school opening date).*
14. This instrument was made by order of ..... Local Education Authority on .....

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PART V

INSTRUMENT OF GOVERNMENT: VOLUNTARY AIDED SCHOOLS

1. The name of the school is .....
2. The school is a voluntary aided school.
3. The name of the governing body is "The governing body of ....." *insert the name of the school as set out in paragraph 1. above.*
4. The governing body shall consist of:
  - (a) X foundation governors (except at any time when the head teacher has given notice that he chooses not to be a governor, when the number of foundation governors will be X);
  - (b) X parent governors;
  - (c) X LEA governors;
  - (d) X teacher governors;  
*(if applicable)*
  - (e) one staff governor;  
*(if applicable)*
  - (f) X co-opted governors (*insert total number of governors referred to in paragraphs 6, 7 and 8 below, if any*);
  - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors ..... (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....).  
*(If applicable)*
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)  
*(If applicable)*
7. X co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)  
*(If applicable)*
8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).
9. *Set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person, set out the basis on which appointments are made.*  
*(If applicable)*
- 10.—
  - (a) The holder of the following office shall be a foundation governor ex-officio:  
*name of office*
  - (b) ..... [or ..... and ..... jointly] shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.  
*Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.*
11. *Set out procedure for eliminating any excess in the number of foundation governors.*
12. *If the school will have a religious character, describe the ethos of the school.*

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- 13. Subject to regulation 31 of the Education (New Schools) (England) Regulations 1999, this instrument of government comes into effect:
  - on the date of making for the purpose of constituting the permanent governing body;
  - for all other purposes, on ..... (*insert the school opening date*).
- 14. This instrument was made by order of ..... Local Education Authority on .....

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations relate to the government of new maintained schools in England from 1st September 1999, when the new schools framework under the School Standards and Framework Act 1998 comes into force.

Part I deals with the application and interpretation of the regulations. For some purposes, the regulations apply to temporary governing bodies set up under the Education Act 1996, as well as to temporary governing bodies set up under section 44 of the School Standards and Framework Act.

Part II relates to the making of arrangements for temporary governing bodies on or after 1st September 1999. Regulation 5 allows arrangements to be made in anticipation that proposals will be approved. Regulation 6 requires the agreement of promoters to provisions of arrangements relating to temporary foundation governors. Regulation 7 deals with the termination of arrangements, for example where the proposals are withdrawn or rejected. Regulation 8 relates to the termination of certain arrangements for temporary governing bodies established in anticipation of approval under the Education Act 1996.

Part III provides for the composition of temporary governing bodies set up on or after 1st September 1999. Broadly speaking, the composition of the temporary governing body follows that of the permanent governing body as required by Part II of Schedule 9 to the School Standards and Framework Act 1998.

Part IV deals with the qualifications and tenure of office of temporary governors where the temporary governing body is set up on or after 1st September 1999. The disqualification provisions contained in Schedule 5 to the Education (School Government) (England) Regulations 1999 are applied with modifications by regulation 24. Regulation 25 covers resignation and removal of temporary governors.

Part IV also contains some miscellaneous provisions, relating to the calling of the first meeting of the temporary governing body, expenses incurred in relation to temporary governing bodies and the provision of information to temporary governors. These miscellaneous provisions also apply to members of a temporary governing body set up under the 1996 Act provisions. From 1st September 1999, detailed provisions relating to meetings and proceedings of all temporary governing bodies are contained in the Education (School Government) (England) Regulations 1999.

Part V deals with the transition from a temporary governing body to a permanent governing body constituted under an instrument of government. Part V applies to temporary governing bodies set up on or after 1st September 1999. It also applies to temporary governing bodies set up in anticipation of approval of proposals under the Education Act 1996 provisions, in cases where proposals for the

establishment of the school are approved on or after 1st September 1999. The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 cover cases where a temporary governing body has been set up under the Education Act 1996 and proposals have been approved under that Act but are implemented on or after 1st September 1999.

Part V requires an instrument of government to be made before the school opens. It provides for the making of the instrument of government, in accordance with the relevant pro-forma set out in the Schedule. The local education authority determine the date when the governing body will be constituted under the instrument of government. This is the incorporation date, which must be as soon as reasonably practicable after the opening date but no later than the last day of the first term.

Regulations 36 to 40 cover appointment and election of governors required by the instrument of government. Regulation 41 requires the temporary governing body to prepare a report on their actions to the new governing body. Regulations 42 to 44 deal with transfers of property, staff and other rights and liabilities from the temporary to the permanent governing body.

Part VI applies with modifications the powers in section 54 to 60 of, and Schedules 16 and 17 to, the School Standards and Framework Act 1998 to appoint staff and take other steps in relation to staffing which are appropriate in preparation for the school's opening. From the date on which the temporary governing body is constituted, staffing powers exercisable by the governing body may be exercised by the temporary governing body.

Part VII deals with the conduct of all schools with temporary governing bodies (whether set up under the Education Act 1996 or the School Standards and Framework Act 1998) from 1st September 1999. Most of this Part applies to schools which have not yet opened, because section 44 of the School Standards and Framework Act 1998 provides that, generally, from the opening date the temporary governing body will be treated as if it were the permanent governing body.

Part VII gives temporary governing bodies general powers and duties. In addition Regulation 56 deals with the execution of documents by the temporary governing body. Regulation 57 requires the head teachers to consult the temporary governing body and the local education authority regarding the curriculum before the school opens. Regulation 58 provides for the determination of dates for the school term and holidays and the times of school sessions. Regulation 59 has the effect that the temporary governing body must ensure that policies designed to promote good behaviour and discipline will be pursued at the school. Regulation 60 relates to the provision of information by and to the temporary governing body. Regulation 61 relates to expenditure at proposed schools without delegated budgets.

Part VIII makes some amendments relating to new schools to the Religious Character of Schools (Designation Procedure) Regulations 1998.