
STATUTORY INSTRUMENTS

1999 No. 362

The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999

PART III

NEW GRANT-MAINTAINED SCHOOLS

Making of the instrument of government

26.—(1) A local education authority shall secure that, before the appointed day, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act⁽¹⁾ for each new GM school.

(2) The instrument of government shall take effect—

- (a) from the date of making for the purpose of reconstituting the governing body, but shall not affect the constitution of the governing body which is conducting the school pending reconstitution under the instrument of government; and
- (b) from the appointed day for all other purposes.

(3) The GM 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.

Modifications to the 1998 Act to enable the instrument of government to be made before the appointed day

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

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

(3) 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 GM governing body so determine”.

(4) Paragraph 1 of Schedule 12 to the 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—

(1) As modified by regulation 27.

“(2A) Where an instrument of government is made before the appointed day for a school which is a grant-maintained school which does not open before the appointed day, such instrument of government—

- (a) shall determine the constitution of the governing body and other matters relating to the school as a maintained school of the category to which it will belong under this Act;
 - (b) shall include a description of the ethos of the school, if it is anticipated that the school will become a foundation or voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a foundation or voluntary school with a religious character with effect from the appointed day);
 - (c) shall take effect from the date of making for the purpose of reconstituting the governing body but shall not affect the constitution of the governing body conducting the school pending reconstitution under the instrument of government; and
 - (d) shall take effect from the appointed day for all other purposes.”; 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 school referred to in paragraph (2A), the school shall be treated as having as registered pupils the number of pupils for which the school is established referred to in the proposals under section 211 or 212 of the Education Act 1996, as the case may be.”.

- (5) References in paragraph 3 of Schedule 12 to the 1998 Act to—
 - (a) “the governing body” and “foundation governors” shall be treated as references to the GM governing body and members of the GM governing body who are foundation governors within the meaning of the 1996 Act (as the case may be); and
 - (b) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school will belong when it is a maintained school.

Additional co-opted governors and substitutes for ex officio foundation governors

28. Regulations 10 and 11 and Schedule 1 shall apply.

Instrument of government

29.—(1) The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 2 which are relevant to the category of maintained school to which the new GM school will belong on the appointed day⁽²⁾.

(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 Schedule 2.

(3) The GM governing body, or the GM transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

(2) See Part IV of the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, S.I.1998/1969.

The GM transitional governing body

30.—(1) Where a new GM school becomes a maintained school on the appointed day, the governing body of the school—

- (a) shall continue in existence as a body corporate; and
- (b) shall so continue as if incorporated under section 36(1) of the 1998 Act,

but as from that day the governing body shall (pending reconstitution under the instrument of government) continue as constituted immediately before that day, subject to this regulation.

(2) In this regulation, “the relevant provisions” means—

- (a) the provisions of the 1996 Act relating to the composition of GM governing bodies, disqualification for office of members of such governing bodies and instruments of government for grant-maintained schools; and
- (b) any regulations and instruments of government in force under those provisions immediately before the appointed day.

(3) The relevant provisions shall have effect for the purpose of determining the composition of the GM transitional governing body and the circumstances in which a person is disqualified for office as a member of the GM transitional governing body, but subject to the modifications in paragraph (4).

(4) For this purpose the relevant provisions shall have effect as if—

- (a) any such instrument of government were required to provide and did provide for the local education authority to appoint the minimum number of governors required to be appointed by the local education authority by Schedule 9 to the 1998 Act for a school of the category to which the school is allocated under Schedule 2 to the 1998 Act (taking account of whether the school is a primary or secondary school and the number of pupils for which the school is established referred to in the proposals under section 211 or 212 of the 1996 Act);
- (b) subject to any appointments required by sub-paragraph (a), they provided that no new appointments shall be made of governors under those provisions.

(5) Members of the GM transitional governing body shall continue in office pending reconstitution of the governing body under the instrument of government, even if the term of office for which they were originally appointed has expired.

(6) For the purposes of these Regulations the governing body as constituted under this regulation shall be referred to as the GM transitional governing body.

Reconstitution of new GM school governing body

31.—(1) Any reference in regulations 31(2) to 37 to the GM transitional governing body shall at any time before the appointed day be construed as a reference to the GM governing body.

(2) The GM transitional governing body shall secure that they are reconstituted under the instrument of government at midnight, on such date within 3 months after the school’s opening date, as the GM transitional governing body shall notify in writing to the local education authority (“the reconstitution date”).

Governors ceasing to hold office

32.—(1) Any member of a GM transitional governing body who will not continue in office by virtue of regulation 33 from midnight on the reconstitution date shall cease to hold office at midnight on that day.

(2) This regulation shall not disqualify a person for election or appointment as a governor of the school in question from midnight on the reconstitution date.

Governors continuing in office

33.—(1) Paragraph (2) applies to any member of a GM transitional governing body who on the reconstitution date is—

- (a) a governor who was when appointed a foundation governor (within the meaning of the 1996 Act), other than an ex officio foundation governor; or
- (b) a governor appointed by the local education authority.

(2) Subject to paragraphs (3) and (7), a governor to whom this paragraph applies shall continue from midnight on the reconstitution date as a governor of the corresponding category required by the instrument of government (if any such category exists), even if he does not conform to the relevant requirements imposed by or under the 1998 Act for a governor of that category.

(3) For the purposes of paragraph (2) above and paragraph (1) of regulation 34, a foundation governor (within the meaning of the 1996 Act) shall not be treated as a governor of a category corresponding to that of ex officio foundation governor.

- (a) (4) (a) A member of a GM transitional governing body holding a foundation governorship ex officio shall continue from midnight on the reconstitution date as a foundation governor if he is entitled under the instrument of government to be an ex officio foundation governor.
- (b) Any other person entitled under the instrument of government to be an ex officio foundation governor shall become such a governor from midnight on the reconstitution date.

(5) A head teacher shall continue as a governor from midnight on the reconstitution date unless (before the instrument of government is made) he has given written notice to the clerk to the GM governing body to the effect that he chooses not to be a governor from that date.

(6) Paragraph (5) is without prejudice to the head teacher's right after the reconstitution 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.

(7) No member of a GM transitional governing body shall continue in office under this regulation if the term for which he was originally appointed has expired.

(8) This regulation is subject to regulation 34 (surplus governors) and paragraphs 1 to 5, 8 and 10 of Schedule 6 (disqualifications).

Removal of surplus governors

34.—(1) This regulation applies where a new GM school has more governors of any of the categories referred to in paragraph (1)(a) or (b) of regulation 33 than are required as governors of the corresponding category by the instrument of government.

(2) Any person who would by virtue of any provision made by or under the 1996 Act have or have had power to remove any such governor shall have power to remove him for the purpose of eliminating the excess referred to in paragraph (1).

(3) Where a governor is removed from office under paragraph (2), the person removing him shall give written notice thereof to the clerk to the GM transitional governing body.

(4) Where the excess referred to in paragraph (1) is not eliminated—

- (a) by the required number of governors of that category resigning; or
- (b) by the required number of governors of that category being removed under paragraph (2);

(in either case, with effect from a date before the reconstitution date) such number of governors of that category as is required to eliminate the excess shall cease to hold office at midnight on the reconstitution date.

- (a) (5) (a) The governors who are to cease to hold office under paragraph (4) shall be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.
- (b) Where the governors in question are of equal seniority, the governors who are to cease to hold office shall be determined before the reconstitution date by drawing lots or, in default, by alphabetical order according to their surnames.

(6) Any procedure set out in the instrument of government, as referred to in paragraph 17 of Schedule 9 to the 1998 Act, for removal of excess foundation governors shall not apply in relation to the reconstitution of the governing body under the instrument of government in accordance with this Part.

New governors

35.—(1) The GM transitional governing body shall secure that appointments or elections of governors required by the instrument of government take place before the reconstitution date with effect from midnight on that day.

(2) In the case of any appointment referred to in paragraph (1) other than the appointment of additional co-opted governors, the clerk to the GM transitional governing body shall give written notice to the person who is to make the appointment unless that person has notified him of an appointment to fill the vacancy(3).

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

Appointment or election of new governors

36.—(1) The following paragraphs apply in relation to the appointment or election of governors referred to in regulation 35(1).

(2) The requirement in paragraph 14(4) of Schedule 9 to the 1998 Act (foundation governors of voluntary aided schools to include parents) shall apply only in so far as it is compatible with regulation 33(2) and (4).

(3) Any co-opted governor (other than an additional co-opted governor) shall be appointed by members of the GM transitional governing body, in accordance with Schedule 3.

(4) Any additional co-opted governor shall be appointed by members of the GM transitional governing body.

(5) Any parent governor shall be either—

- (a) elected (after the school's opening date) by parents of registered pupils at the new GM school and himself such a parent at the time at which he is elected; or
- (b) appointed as a parent governor (after the school's opening date) by the GM transitional governing body in the circumstances and subject to the provisions set out in Schedule 4.

(6) Any partnership governor shall be a person who (after the school's opening date) is nominated as a partnership governor, and appointed as such, in accordance with Schedule 5.

(7) Any staff governor shall be elected (after the school's opening date) by persons employed (under a contract of employment or a contract for services) to work at the new GM school otherwise than as teachers, and shall be himself a person so employed at the time when he is elected.

(3) In the case of additional co-opted governors, the governors making the appointment are required to seek nominations by virtue of paragraph 15 of Schedule 9 to the 1998 Act.

(8) Any teacher governor shall be—

- (a) a person elected (after the school’s opening date) by teachers at the new GM school; and
- (b) such a teacher at the time when he is elected.

(9) The quorum for a meeting of the GM transitional governing body to consider appointment of partnership governors, parent governors or co-opted governors (other than co-opted governors who are foundation governors) and any vote in connection with such appointments shall be any two-thirds (rounded up to a whole number) of the governors entitled to vote on those respective matters.

Joint appointments

37. If—

- (a) the instrument of government provides for one or more governors 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.

Elections

38. Regulation 19 shall also apply in relation to the election of governors referred to in regulation 35(1) but in regulation 19 for this purpose—

- (a) paragraph (1) shall be omitted;
- (b) there shall be substituted for paragraph (2)—
 - “(2) Subject to paragraph (4), in this regulation “appropriate authority” means—
 - (a) in relation to a new GM school which is a community or voluntary controlled school, the local education authority, and
 - (b) in relation to a new GM school which is a voluntary aided or foundation school, the GM transitional governing body.”;
- (c) there shall be substituted for paragraph (4)—
 - “(4) The local education authority shall be the appropriate authority in relation to a school within paragraph (2)(b), if the GM transitional governing body and the local education authority so agree.”; and
- (d) for paragraph (11) there shall be substituted:
 - “(11) Where a local education authority are the appropriate authority, that authority shall exercise their functions under this regulation in a manner calculated to enable the GM transitional governing body to fulfil their duty under regulation 35(1)”.

Tenure of office

39. Regulation 20 shall also apply to the tenure of office of governors required at new GM schools by instruments of government or by regulation 30(4), but in regulation 20 for this purpose, for paragraphs (1) and (2), there is substituted—

- “(1) A member of the GM transitional governing body who continues as a governor of the school from midnight on the reconstitution date (other than the head teacher or an ex officio foundation governor) shall hold office for the remainder of the term for which he was originally appointed or elected but for no longer than 4 years from the appointed day.

(1A) Any other governor required by the instrument of government for a new GM school, or by regulation 30, other than—

- (a) the head teacher;
- (b) a co-opted governor (not including an additional co-opted governor);
- (c) an ex officio foundation governor; or
- (d) a substitute governor,

shall hold office for a term of four years.

(2) Any co-opted governor referred to in regulation 35(1) (other than an additional co-opted governor) shall hold office for the term of one year.”

Qualifications and disqualifications

40. Schedule 6 sets out the circumstances in which a person is qualified or disqualified for holding or continuing in office, or for being elected, appointed or nominated, as a governor of a new GM school required by an instrument of government.