
STATUTORY INSTRUMENTS

2007 No. 958

The School Governance (New Schools) (England) Regulations 2007

PART 1

General

Citation and commencement

1. These Regulations may be cited as the School Governance (New Schools) (England) Regulations 2007 and come into force on 25th May 2007.

Revocation

2. The New Schools (General) (England) Regulations 2003(1) are revoked.

Interpretation

3.—(1) In these Regulations—

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

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

“EA 2002” means the Education Act 2002;

“EIA 2006” means the Education and Inspections Act 2006(3);

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2007(4);

“head teacher designate” means a person who has been appointed as the head teacher of a new school but who has not yet taken up the post;

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

“new school” has the meaning given by section 72(3) of SSFA 1998;

“pupil” has the meaning given by section 3 of EA 1996(5);

“qualifying foundation school” means a foundation or a foundation special school that has or is proposed to have a foundation established otherwise than under SSFA 1998, and whose instrument of government provides or is proposed to provide for the majority of governors to be foundations governors appointed by the foundation; and

“school teacher” has the meaning given by section 122 of EA 2002.

(1) [SI 2003/1558](#).

(2) [1996 c.56](#).

(3) [2006 c.40](#).

(4) [SI 2007/957](#).

(5) Section 3 was amended by paragraph 34 of Schedule 21 to the Education Act 2002.

(2) In these Regulations, references to a school having a delegated budget are to be interpreted in accordance with section 39(2) of EA 2002.

(3) Any reference in these Regulations to—

- (a) a committee is a reference to a committee established by the temporary governing body to which the temporary governing body has delegated any of its statutory functions;
- (b) a temporary governing body is a reference to the temporary governing body of any school or proposed school in respect of which the provision applies;
- (c) a temporary governor of a particular category is to be interpreted in accordance with Part 3; and
- (d) a foundation or to a proposed school having a foundation is to be read in accordance with section 21 of SSFA 1998.

Service of notices

4. Any notice required to be served by or under these Regulations must be served in accordance with section 572 of EA 1996(6).

PART 2

Arrangements for the Incorporation of Temporary Governing Bodies

Arrangements made in anticipation of approval of proposals

5.—(1) Subject to paragraph (4) below, where any proposals to establish a maintained school have been published under section 7, 10 or 11 of EIA 2006, the local education authority may make arrangements in anticipation of approval of the proposals(7).

(2) If proposals are to establish a voluntary controlled school, the local education authority must consult the proposers—

- (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 proposes to exercise it, as to the date on which the arrangements should be made.

(3) If proposals are to establish a voluntary aided or foundation school, the local education authority and the proposers must 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) If two or more sets of proposals for the establishment of a maintained school have been published, the local education authority must not exercise the power given to it in paragraph (1) above.

Agreements necessary for arrangements

6. Where proposals to establish a foundation school or a voluntary school have been published by proposers, a local education authority must not make arrangements in respect of the school without

(6) Amended by the Education Act 1996 (Electronic Communications) Order 2004 (SI 2004/2521).

(7) Approval may be under paragraph 8 or 10 of Schedule 2 to EIA 2006.

the agreement of the proposers as to any provision which will be made in relation to the temporary foundation governors.

PART 3

Categories of Temporary Governor

Temporary parent governors

7.—(1) In these Regulations, “temporary parent governor” means a person appointed to be a member of the temporary governing body of a new school by—

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

(2) 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, any arrangements made under regulation 5 of these Regulations or section 34(1) of EA 2002 must 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) Subject to paragraph (5), no person may 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 a school is, or is to be, a maintained nursery school, he is the parent of a child for whom educational or other provision is or is likely to be made on the premises of the school (including any such provision made by the temporary governing body under section 27 of EA 2002);
- (c) where it is not reasonably practicable to appoint a person referred to in sub-paragraph (a) or (b), he is the parent of a child of or under compulsory school age.

(4) No person may be appointed as a temporary parent governor of a school which is or will be a maintained special school unless he is—

- (a) the parent of a child who is or is likely to become a registered pupil at the school;
- (b) where one or more maintained special schools have been, or are to be, discontinued (“the discontinued special schools”) and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to the new school, a parent of a former pupil of the discontinued special schools;
- (c) the parent of a child of or under compulsory school age with special educational needs; or
- (d) a parent with experience of educating a child with special educational needs.

(5) The temporary governing body may only appoint a person referred to in sub-paragraphs (4) (b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.

(6) A person is disqualified from appointment as a temporary parent governor if he is—

- (a) an elected member of the local education authority; or

(b) paid, or likely to be paid, to work at the school for more than 500 hours in any consecutive twelve month period.

(7) A person is not disqualified from continuing to hold office as a temporary parent governor when he ceases to fulfil any of the requirements set out in paragraphs (3) and (4), unless he is otherwise disqualified under these Regulations.

Temporary staff governors

8.—(1) In these Regulations “temporary staff governor” means—

- (a) the head teacher or head teacher designate, who is a temporary staff governor by virtue of his office unless he resigns the position in accordance with regulation 22(1);
- (b) a person who is appointed to be a member of the temporary governing body of a new school in accordance with this regulation and who is paid to work at a maintained school.

(2) Subject to paragraph (3) any temporary staff governor is to be appointed by the temporary governing body.

(3) 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 proposers, a person may not be appointed under paragraph (2) unless he has been nominated for appointment as a temporary staff governor by the proposers.

(4) Where a person has been nominated in accordance with paragraph (3) by the proposers, that person is to be co-opted as a temporary staff governor.

(5) At least one temporary staff governor (in addition to the head teacher or head teacher designate) must be a school teacher⁽⁸⁾ unless no school teacher is willing to be appointed.

(6) Where there will be three or more temporary staff governors, at least one temporary staff governor must be a person who is not a school teacher unless no such person is willing to be appointed.

(7) 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, the arrangements made under regulation 8 must 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 staff governors of the new school.

(8) A temporary staff governor, upon ceasing to work at a maintained school, is disqualified from continuing to hold office as such a temporary governor.

Temporary LEA governors

9.—(1) In these Regulations “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.

(2) A person is disqualified from appointment as a temporary LEA governor of a school if he is eligible to be a temporary staff governor of a school.

Temporary community governors

10.—(1) In these Regulations, “temporary community governor” means a person who is appointed to be a member of the temporary governing body of a new school by the local education authority and who is:

(8) Within the meaning of section 122 of EA 2002.

- (a) a person who lives or works in the community served, or to be served, by the new school; or
 - (b) a person who, in the opinion of the temporary governing body, is committed to the good government and success of the new school.
- (2) Where a new school is, or will be, a community special school or a foundation special school(9), Schedule 1 applies.
- (3) A person is disqualified from appointment as a temporary community governor if he:
- (a) is eligible to be a temporary staff governor of the new school; or
 - (b) is an elected member of the local education authority.

Temporary foundation governors

11.—(1) In these Regulations, “temporary foundation governor” means a person who is appointed as a member of the temporary governing body of a new school, otherwise than by the local education authority, and who:

- (a) is appointed for the purposes of securing that the character of the new school, including where the new school has, or the proposals for its establishment indicate that it will have, a particular religious character designated or intended to be designated by order under section 69(3) of SSFA 1998, such religious character, is established and developed; and
- (b) where the new school has or is to have a foundation, is appointed for the purpose of securing that the new school is established and conducted in accordance with the foundation’s governing documents, including, where appropriate, any trust deed relating to the school.

(2) “Ex officio temporary foundation governor” means a temporary foundation governor who is the holder of an office by virtue of which he is entitled to be a temporary foundation governor.

(3) A temporary ex officio foundation governor is, upon ceasing to hold the office from which his temporary governorship derives, disqualified from continuing to hold office as such a temporary governor.

Temporary partnership governors

12.—(1) In these Regulations “temporary partnership governor” means—

- (a) in the case of a new foundation school proposals for the establishment of which were published by a local education authority, a person appointed as such by the local education authority;
- (b) in any other case, a person nominated as such by the proposers and appointed as such by the temporary governing body.

(2) A person who nominates a person for appointment as, or appoints a person as, a temporary partnership governor must be satisfied that the nominee or appointee appears to be—

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

(3) A person is disqualified from nomination or appointment as a temporary partnership governor of a new school if he:

- (a) is a parent of a child who is or is likely to become a registered pupil at the new school;
- (b) is eligible to be a temporary staff governor of the new school;
- (c) is an elected member of the local education authority; or

(9) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

- (d) is employed by the local education authority in connection with their functions as a local education authority.

Temporary sponsor governors

13.—(1) In these Regulations—

- (a) “temporary sponsor governor” means a person appointed to be a member of a temporary governing body of a new school in accordance with paragraph (2);
- (b) “sponsor” in relation to a school means:
 - (i) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to a statutory obligation; or
 - (ii) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school,provided that, in either case, such person is not entitled to appoint the temporary foundation governors nor connected to any person so entitled.
- (c) for the purposes of this paragraph, a person is connected with a person entitled to appoint temporary foundation governors where—
 - (i) he is a partner or relative (including a spouse or someone living with that person as if he or she were that person’s spouse); or
 - (ii) either or both persons are a body corporate and one owns at least one-fifth of the other’s equity share capital (within the meaning of the Companies Act 1985⁽¹⁰⁾), or is entitled to exercise or control the exercise of more than one-fifth of the voting power of the other at any general meeting.

(2) Where a new school has one or more sponsors, the temporary governing body may appoint up to two or four (as the case may be) temporary sponsor governors, nominated in accordance with paragraph (3).

(3) Where the temporary governing body intends to appoint temporary sponsor governors, they must seek nominations for such appointments from the school’s sponsor or, as the case may be, from one or more of the school’s sponsors.

Temporary associate members

14.—(1) In these Regulations “temporary associate member” means a person appointed by the temporary governing body to one or more committees of the temporary governing body but who is not a member of the temporary governing body.

(2) A temporary associate member holds office for such period as may be determined by the temporary governing body at the date of his appointment.

(3) Nothing in this regulation prevents a temporary associate member from being reappointed at the expiration of his term of office or from being appointed as an associate member of the governing body.

(4) Temporary associate members are not to be counted in any quorum and may not form the majority of members on any committee to which they are appointed.

(5) Subject to paragraph (6), temporary associate members have such voting rights in the committees to which they are appointed as are to be determined by the temporary governing body at the date of their appointment.

⁽¹⁰⁾ The Companies Act 1985 has been prospectively repealed and replaced by the Companies Act 2006.

- (6) Temporary associate members may not vote on any resolution concerning—
- (a) staff appointments, pay, discipline, performance management, grievance or dismissal;
 - (b) admissions;
 - (c) pupil discipline;
 - (d) appointment of temporary governors; or
 - (e) the budget and financial commitments of the temporary governing body.
- (7) A temporary associate member may be removed from office by the temporary governing body at any time.
- (8) Any person who is disqualified from holding office as a temporary governor of a new school under Schedule 2 is likewise disqualified from appointment as, or from continuing as, a temporary associate member of the governing body, save as provided in paragraph 1 of Schedule 2.

PART 4

Composition of Temporary Governing Bodies

General principles

- 15.**—(1) The size of the membership of the temporary governing body, being no fewer than 9 or more than 20 temporary governors, is to be determined by the local education authority.
- (2) In determining the size of the membership of the temporary governing body, the local education authority must not include:
- (a) any temporary sponsor governors; or
 - (b) any temporary foundation governors appointed in accordance with regulation 19(2)(b) or regulation 20(2)(b).
- (3) In calculating the number of temporary governors required in each category in accordance with regulations 16 to 21, the numbers are to be rounded up or down to the nearest whole number.
- (4) In calculating the number of temporary staff governors required, the head teacher is to be included whether or not he has resigned his governorship.

New community schools, new community special schools and new maintained nursery schools

- 16.**—(1) The temporary governing body of a proposed community school, proposed community special school(**11**) or proposed maintained nursery school(**12**) is to be composed as follows:
- (a) one third or more temporary parent governors;
 - (b) at least two but no more than one third temporary staff governors;
 - (c) one fifth temporary LEA governors; and
 - (d) one fifth or more temporary community governors.
- (2) The temporary governing body may in addition appoint up to two temporary sponsor governors, or where the proposed school is to be a secondary school, up to four temporary sponsor governors.

(11) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

(12) Within the meaning of section 39(1) of EA 2002.

New foundation and foundation special schools without foundations

17.—(1) The temporary governing body of a proposed foundation school or a proposed foundation special school(13) which in either case does not, or is not proposed to have, a foundation is to be composed as follows:

- (a) one third or more temporary parent governors;
- (b) at least two but no more than one third temporary staff governors;
- (c) at least one but no more than one fifth temporary LEA governors;
- (d) one tenth or more temporary community governors; and
- (e) at least two but no more than one quarter temporary partnership governors.

(2) The temporary governing body may in addition appoint up to two temporary sponsor governors, or where the proposed school is to be a secondary school, up to four temporary sponsor governors.

New foundation and foundation special schools which have or are to have foundations but which are not to be qualifying foundation schools

18.—(1) The temporary governing body of a proposed foundation school or a proposed foundation special school(14) which in either case has, or is proposed to have, a foundation but which is not to be a qualifying foundation school is to be composed as follows:

- (a) one third or more temporary parent governors;
- (b) at least two but no more than one third temporary staff governors;
- (c) at least one but no more than one fifth temporary LEA governors;
- (d) one tenth or more temporary community governors; and
- (e) at least two but no more than 45 per cent temporary foundation governors.

(2) The temporary governing body may in addition appoint up to two temporary sponsor governors, or where the proposed school is to be a secondary school, up to four temporary sponsor governors.

New qualifying foundation schools

19.—(1) The temporary governing body of a proposed qualifying foundation school is to be composed as follows—

- (a) at least two but no more than one third temporary staff governors;
- (b) at least one but no more than one fifth temporary LEA governors;
- (c) at least one temporary parent governor;
- (d) one tenth or more temporary community governors;
- (e) such number of temporary foundation governors as out number all the other temporary governors listed in sub-paragraphs (a) to (d) by up to two; and
- (f) such number of temporary foundation governors who are eligible for election or appointment as temporary parent governors that, when they are counted with the temporary parent governors, comprise one third or more of the total membership of the temporary governing body.

(2) In addition—

(13) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

(14) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

- (a) the temporary governing body may appoint up to two temporary sponsor governors or, where the proposed school is to be a secondary school, up to four temporary sponsor governors; and
- (b) the foundation may appoint such number of temporary foundation governors (up to two or, where the school is to be a secondary school, up to four) as are required to preserve their majority.

New voluntary aided schools

20.—(1) The temporary governing body of a proposed voluntary aided school⁽¹⁵⁾ is to be composed as follows:

- (a) at least two but no more than one third temporary staff governors;
 - (b) at least one but no more than one tenth temporary LEA governors;
 - (c) at least one temporary parent governor;
 - (d) such number of temporary foundation governors as out number all the other temporary governors listed in sub-paragraphs (a) to (c) by two; and
 - (e) such number of temporary foundation governors who are eligible for election or appointment as temporary parent governors that, when they are counted with the temporary parent governors, comprise one third or more of the total membership of the temporary governing body.
- (2) In addition—
- (a) the temporary governing body may appoint up to two temporary sponsor governors or, where the proposed school is to be a secondary school, up to four temporary sponsor governors; and
 - (b) the person who is entitled to appoint temporary foundation governors may appoint such number of temporary foundation governors (up to two, or where the proposed school is to be a secondary school, up to four temporary sponsor governors) as are required to preserve their majority.

New voluntary controlled schools

21.—(1) The temporary governing body of a proposed voluntary controlled school⁽¹⁶⁾ is to consist of the following:

- (a) one third or more temporary parent governors;
 - (b) at least two but no more than one third temporary staff governors;
 - (c) at least one but no more than one fifth temporary LEA governors;
 - (d) one tenth or more temporary community governors; and
 - (e) at least two but no more than one quarter temporary foundation governors.
- (2) The temporary governing body may in addition appoint up to two temporary sponsor governors or, where the proposed school is to be a secondary school, up to four temporary sponsor governors.

⁽¹⁵⁾ Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

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PART 5

Tenure of Office and Qualifications

Resignation

22.—(1) Any member of a temporary governing body may resign his governorship by giving written notice to the clerk to the temporary governing body of the school.

(2) An ex officio temporary foundation governor may resign as a temporary governor either permanently or temporarily but his resignation does not prejudice the temporary governorship of his successor in the office from which the ex officio temporary governorship derives.

(3) The head teacher may withdraw his resignation at any time by giving written notice to the clerk to the temporary governing body.

Removal

23. Any temporary governor of a new school may be removed from office by the person or persons who appointed him, who must give written notice thereof to the clerk to the temporary governing body and to the governor so removed.

Procedure for removal of temporary governors by the temporary governing body

24.—(1) This regulation applies in relation to the removal from office of:

- (a) a temporary parent governor appointed by the temporary governing body;
- (b) a temporary staff governor, other than the head teacher or head teacher designate;
- (c) a temporary partnership governor appointed by the temporary governing body; or
- (d) a temporary sponsor governor.

(2) A resolution to remove a temporary governor from office which is passed at a meeting of the temporary governing body will not have effect unless—

- (a) before the temporary governing body resolve to remove the temporary governor from office, the temporary governor or governors proposing his removal, at that meeting, state their reasons for doing so and the governor whom it is proposed be removed is given an opportunity to make a statement in response;
- (b) it is confirmed by a resolution passed at a second meeting of the temporary governing body held not less than fourteen days after the first meeting; and
- (c) the matter of the temporary governor's removal from office is specified as an item of business on the agenda for each of those meetings.

Qualifications and disqualifications

25. Schedule 2 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office, or from being appointed or nominated as a temporary governor of a new school.

Expenses

26. Where a temporary governing body is constituted for a new school the local education authority is 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

27. The local education authority must secure that the members of the temporary governing body of a new school are, on being appointed, provided (free of charge) with such information as the authority consider they require to enable the temporary governing body to discharge their functions effectively.

PART 6

General Conduct of New Schools

Interpretation and application of Part 6

28. In this Part “proposed school” means a school which has not yet opened for which there is a temporary governing body constituted in accordance with arrangements under section 34 of EA 2002.

29. This Part does not apply to any committee established by the temporary governing body to exercise functions relating to the appointment, grievance, conduct and discipline, capability, suspension or dismissal of individual members of the school staff.

Conduct of the school before the school opening date

30. Section 88 of EIA 2006(17) and sections 27, 28 and 90 of, and Schedule 1 to, EA 2002 applies in relation to a proposed school(18) with the following modifications—

- (a) references to governing body are treated as references to temporary governing body;
- (b) references to a maintained school are treated as including a reference to a proposed maintained school;
- (c) references to the instrument of government are treated as a reference to the instrument of government whether or not it has taken effect;
- (d) references to a community school, community special school, voluntary controlled school, maintained nursery school, foundation school, foundation special school or a voluntary aided school are treated as including a reference to a proposed community school, proposed community special school, proposed voluntary controlled school, proposed maintained nursery school, proposed foundation school, proposed foundation special school or a proposed voluntary aided school; and
- (e) section 88(3)(c) and (d) of EIA 2006 and paragraphs 2(2) and 2(3) of Schedule 1 to EA 2002 do not apply.

Conduct of the school on or after the school opening date

31.—(1) 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,

(17) Section 88 of EIA 2006 comes into force 1st April 2007.

(18) Section 34(7) of EA 2002 provides that for the purposes of section 30(3) of that Act and sections 495 to 498 of EA 1996, the temporary governing body are to be treated as if they were the governing body at any time before the school opening date.

Schedule 1 to EA 2002 applies⁽¹⁹⁾ with the modifications set out in paragraph (2).

(2) The modifications are as follows—

- (a) for references to “governing body” substitute references to “temporary governing body”;
- (b) in paragraph 2(1) of Schedule 1 to EA 2002, the words “as for the time being set out in the school’s instrument of government” are omitted; and
- (c) paragraphs 2(2) and 2(3) of Schedule 1 to EA 2002 do not apply.

Execution of documents by the temporary governing body

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

(2) 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 chair or vice chair of the temporary governing body is to 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

33. The head teacher of a proposed school must, in preparing to discharge his functions under Part 6 of EA 2002 in relation to the curriculum for the school, consult the temporary governing body and the local education authority.

School terms, holidays and sessions

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

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

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

Chair and vice chair of temporary governing body

35.—(1) The members of the temporary governing body must, at their first meeting, elect a chair and vice-chair from among their number, subject to paragraph (6).

(2) The chair or vice-chair of a temporary governing body may at any time resign his office by giving notice in writing to the clerk to the temporary governing body.

(3) The chair or vice-chair of the temporary governing body cease to hold office as such if—

⁽¹⁹⁾ Under section 34(7) of EA 2002, the temporary governing body of a school are to be treated for the purposes of the Education Acts as if they were the governing body during the period beginning with the school opening date and ending with the time the governing body are constituted under an instrument of government; subject to section 34(8) under which Schedule 1 does not apply to temporary governing bodies unless provided for in regulations made under section 34(5).

- (a) he ceases to be a member of the temporary governing body;
- (b) he is paid to work at the new school;
- (c) he is removed from office in accordance with regulation 37; or
- (d) in the case of a vice-chair, he is elected in pursuance of paragraph (4) to fill a vacancy in the office of chair.

(4) Where a vacancy arises in the office of chair or vice-chair, the temporary governing body must at their next meeting elect one of their members to fill that vacancy subject to paragraph (6).

(5) Where the chairman is absent from any meeting or there is at any time a vacancy in the office of the chair, the vice-chair must act as the chair for all purposes.

(6) Every member of the temporary governing body of a new school is eligible for election as chair or vice-chair of the temporary governing body or as a chair of a meeting except a member who is—

- (a) the head teacher or head teacher designate of the new school;
- (b) a person employed to work at the new school or, in the opinion of the other temporary governors, likely to be so employed; or
- (c) a pupil at the new school, or a person who, in the opinion of the other temporary governors, is likely to be such a pupil.

Delegation of functions to the chair and vice-chair in cases of urgency

36.—(1) The chair has the power, where in his opinion the circumstances mentioned in paragraph (2) apply, to exercise—

- (a) any function of the temporary governing body which can be delegated to an individual; and
- (b) any function that under regulation 48(2) cannot otherwise be delegated to an individual.

(2) The circumstances are that a delay in exercising the function would be likely to be seriously detrimental to the interests of—

- (a) the new school;
- (b) any pupil of, or person likely to become a pupil of, the new school;
- (c) a parent of any such pupil, or of any person likely to become such a pupil; or
- (d) a person who works, or is likely to work, at the new school.

(3) In paragraph (2) “delay” means delay for a period extending beyond the earliest date on which it would be reasonably practicable for a meeting of the temporary governing body, or a committee of the temporary governing body to which the function in question has been delegated, to be held.

(4) Where it appears to the vice-chair that—

- (a) the circumstances stated in paragraph (2) apply, and
- (b) the chair (whether by reason of a vacancy in his office or otherwise) would be unable to exercise the function in question before the detriment referred to in that paragraph is suffered,

the reference in paragraph (1) to the chair are to be read as if it were a reference to the vice-chair.

Removal of the chair or the vice-chair from office

37.—(1) Subject to paragraph (2), the temporary governing body may remove the chair or vice chair from office.

(2) A resolution to remove the chair or vice-chair from office does not have effect unless the matter is specified as an item of business on the agenda for the meeting of the temporary governing body, of which notice has been given in accordance with regulation 42(4).

(3) Before the temporary governing body resolve to remove the chair or vice-chair from office, the temporary governor proposing his removal must at that meeting state his reasons for doing so and the chair or vice chair (as the case may be) must be given the opportunity to make a statement in response, before withdrawing from the meeting.

Clerk to the temporary governing body

38.—(1) The local education authority must appoint the first clerk to the temporary governing body of a new school which will be a community, voluntary controlled, community special school, maintained nursery school or a foundation or foundation special school proposals for the establishment of which were published by the local education authority.

(2) The proposers of the school must appoint the first clerk to the temporary governing body of a new school which will be a voluntary aided or foundation school or a foundation special school proposals for the establishment of which were published by proposers.

(3) Subject to paragraphs (1) and (2)—

(a) the local education authority must appoint a person selected by the temporary governing body to be the clerk to the temporary governing body and to each committee, in the case of a school which is or will be a community, voluntary controlled, community special or maintained nursery school;

(b) the temporary governing body must appoint a clerk to the temporary governing body and each committee, in the case of a school which is or will be a foundation, voluntary aided or foundation special school.

(4) The clerk to the temporary governing body must not be—

(a) a temporary governor;

(b) a temporary associate member; or

(c) the head teacher or head teacher designate of the new school.

(5) Notwithstanding paragraph (4), the temporary governing body or a committee may, if the clerk fails to attend a meeting, appoint any one of their number (who is not the head teacher or head teacher designate) to act as clerk for the purposes of that meeting.

Functions of the clerk

39. The clerk must—

(a) convene meetings in accordance with regulations 42 and 51(1);

(b) attend meetings and ensure that minutes of the proceedings are produced in accordance with regulations 44(1) and 51(7);

(c) maintain a register of members of the temporary governing body and of temporary associate members and report any vacancies to the temporary governing body;

(d) maintain a register of temporary governors' attendance at meetings and report on non-attendance to the temporary governing body;

(e) give and receive notices in accordance with regulations 22(1) and (3), 23, 35(2), 42(3) and (4), 51(2), 53(2) and paragraph 11 of Schedule 2;

(f) report to the temporary governing body as required on the discharge of his functions; and

- (g) perform such other functions as may be determined by the temporary governing body from time to time.

Removal of the clerk

40.—(1) This regulation is without prejudice to any rights and liabilities which the clerk may have under any contract with the temporary governing body or with the local education authority.

(2) The temporary governing body may by resolution remove from office the clerk to the temporary governing body or any clerk appointed to any of their committees.

(3) If at any time the new school does not have a delegated budget, the local education authority, having consulted the temporary governing body, may remove the clerk to the temporary governing body or the clerk of any committee of the temporary governing body and appoint a substitute.

Rights of persons to attend meetings of the governing body

41.—(1) Subject to regulation 45 and to Schedule 3—

- (a) the following persons are entitled to attend any meeting of the temporary governing body or their committees—
 - (i) subject to regulation 46, a temporary governor;
 - (ii) the head teacher or head teacher designate of the new school, whether or not he is a temporary governor of that school;
 - (iii) the clerk to that meeting; and
 - (iv) such other persons as the temporary governing body may determine;
- (b) a temporary associate member is entitled to attend—
 - (i) any meeting of the temporary governing body; and
 - (ii) any meeting of a committee to which he has been appointed.

(2) The temporary governing body may exclude a temporary associate member from any part of their meeting or from a meeting of a committee of the temporary governing body when the business under consideration concerns a person who is, or is likely to become, a member of staff or pupil at the new school.

Convening meetings of the temporary governing body

42.—(1) A temporary governing body must hold a meeting as often as occasion may require.

(2) Meetings of the temporary governing body must be convened by the clerk and, without prejudice to paragraph (3), in exercising this function the clerk must comply with any direction given by—

- (a) the temporary governing body;
- (b) the chair, so far as such direction is not inconsistent with any direction given under subparagraph (a).

(3) Any three members of the temporary governing body may requisition a meeting by giving written notice to the clerk that includes a summary of the business to be transacted and the clerk must convene a meeting as soon as is reasonably practicable.

(4) The clerk must give written notice of the meeting, a copy of the agenda for the meeting and any reports or other papers to be considered at the meeting at least seven clear days in advance to—

- (a) each temporary governor;
- (b) the head teacher or head teacher designate (if he is not a temporary governor); and

(c) each temporary associate member (if any),

provided that where the chair so determines on the ground that there are matters demanding urgent consideration, it is sufficient if the written notice of the meeting states that fact and the notice, copy of the agenda, reports and other papers to be considered are given within such shorter notice period as he directs.

(5) The power of the chair to direct that a meeting be held within a shorter period does not apply in relation to any meeting at which the chair's removal from office (under regulation 37) or the suspension of any temporary governor (under regulation 46) or a decision on the name of the proposed school is to be considered.

Proceedings of the temporary governing body

43.—(1) The quorum for a meeting of the temporary governing body and for any vote on any matter at such a meeting, is one half (rounded up to a whole number) of the membership of the temporary governing body.

(2) For the purposes of paragraph (1), the membership of the temporary governing body is not to include vacant positions on the temporary governing body.

(3) Subject to paragraph (5), every question to be decided at a meeting of the temporary governing body is to be determined by a majority of the votes of the temporary governors present and voting on the questions.

(4) Where there is an equal division of votes the chair or, as the case may be, the person who is acting as chair for the purposes of the meeting (provided that such person is a governor), is to have a second or casting vote.

(5) No decision on the name of the proposed school shall have effect unless—

(a) the matter in question is specified as an item of business on the agenda for a meeting of the temporary governing body of which notice has been given in accordance with regulation 42(4); and

(b) all of the members of the temporary governing body vote in favour of the name,

provided that where any temporary governor is unable to attend the meeting at which the name of the proposed school is to be considered, he may vote by proxy where such proxy is a temporary governor or a temporary associate member whose appointment is in writing and signed by the temporary governor so unable to attend.

(6) The proceedings of the temporary governing body of a school are not invalidated by—

(a) any vacancy among their number;

(b) any defect in the election, appointment or nominations of any temporary governor; or

(c) any defect in the appointment of any chair or vice-chair.

Minutes and papers

44.—(1) The clerk (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation 38(5)) must ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the temporary governing body) by the chair of the next meeting.

(2) Subject to paragraph (3), the temporary governing body must, as soon as reasonably practicable, make available for inspection by any interested person, a copy of—

(a) the agenda for every meeting;

(b) the signed minutes of every such meeting; and

- (c) any report or other paper considered at any such meeting.
- (3) The temporary governing body may exclude from any item required to be made available in pursuance of paragraph (2) any material relating to—
 - (a) a named person who works, or who it is proposed should work, at the new school;
 - (b) a named pupil at, or candidate for admission to, the new school;
 - (c) any other matter that, by reason of its nature, the temporary governing body are satisfied should remain confidential.

Restrictions on persons taking part in proceedings of the temporary governing body or their committees

- 45.—**(1) In this regulation and in Schedule 3—
- (a) “relevant person” means a temporary governor, a temporary associate member, the head teacher or head teacher designate (whether or not he is a governor) or any person appointed as clerk to the temporary governing body or to a committee;
 - (b) any reference to a “meeting of the new school” is a reference to a meeting of the temporary governing body, or of a committee.
- (2) Subject to paragraph (4), where—
- (a) in relation to any matter there may be a conflict between the interests of a relevant person and the interests of the temporary governing body;
 - (b) a fair hearing is required and there is any reasonable doubt about a relevant person’s ability to act impartially in relation to any matter; or
 - (c) a relevant person has a pecuniary interest in any matter,
- that person, if present at a meeting of the new school at which the matter is the subject of consideration, must disclose his interest, withdraw from the meeting and not vote on the matter in question.
- (3) Nothing in this regulation or in Schedule 3 is to be construed as precluding—
- (a) the temporary governing body, or a committee of the temporary governing body, from—
 - (i) allowing a person who appears to them to be able to give evidence to attend any hearing conducted by them into any matter and to present his evidence; or
 - (ii) hearing representations from a relevant person acting in a capacity other than that of a relevant person; or
 - (b) a relevant person from entering into a contract with the temporary governing body from which he is entitled to profit.
- (4) A person who is acting as the clerk to a meeting of the new school is not required to withdraw from a meeting by this regulation or by Schedule 3 unless his appointment to office, his remuneration, or disciplinary action against him is the subject of consideration, but if this regulation or Schedule 3 would have otherwise required him to withdraw, he must not act in any capacity other than that of a clerk.
- (5) Where there is any dispute as to whether a relevant person is required by this regulation or by Schedule 3 to withdraw from a meeting of the new school and not vote, that question is to be determined by the other temporary governors present at the meeting.
- (6) Schedule 3 makes provision about pecuniary interests and other specified conflicts of interest.

Suspension of temporary governors

46.—(1) Subject to paragraphs (2), (3) and (4) the temporary governing body may by resolution suspend a temporary governor for all or any meetings of the temporary governing body or of any of their committees for a fixed period of up to 6 months on one or more of the following grounds—

- (a) that the temporary governor, being a person paid to work at the new school, is the subject of disciplinary proceedings in relation to his employment;
- (b) that the temporary governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he is disqualified from continuing to hold office as a governor under Schedule 2;
- (c) that the temporary governor has acted in a way that is inconsistent with the ethos or with the religious character of the school and has brought or is likely to bring the school or the temporary governing body or his office into disrepute; or
- (d) that the temporary governor is in breach of his duty of confidence to the new school or to the staff or pupils.

(2) A resolution to suspend a temporary governor from office is not to have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 42(4).

(3) Before a vote is taken on a resolution to suspend a temporary governor, the temporary governor proposing the suspension must at that meeting state his reasons for doing so, and the temporary governor who is the subject of the resolution must be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with paragraph 2(2) of Schedule 3.

(4) Nothing in this regulation is to be read as affecting the right of a temporary governor who has been suspended to receive notices of, and agendas and reports or other papers for, meetings of the temporary governing body during the period of his suspension.

Delegation of functions

47.—(1) Subject to regulation 48, the temporary governing body of a new school may establish committees and delegate any of their functions to—

- (a) a committee;
- (b) any temporary governor; or
- (c) the head teacher or head teacher designate.

(2) Where the temporary governing body has delegated functions to an individual or to a committee this is not to prevent the temporary governing body from exercising those functions.

(3) The temporary governing body must review the exercise of functions they have delegated annually.

Restrictions on delegation

48.—(1) The temporary governing body may not delegate to an individual functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) the local education authority's scheme under section 48(1) of SSFA 1998, to the extent that it requires the temporary governing body to give their approval to the first formal budget plan of the financial year;
- (b) section 88 of EIA 2006 (*Responsibility of governing bodies for discipline*); or

(c) sections 88, 89, 89A, 89D, 90(8) or 90A of SSFA 1998⁽²⁰⁾, section 3(1)(cc) of the Diocesan Boards of Education Measure 1991⁽²¹⁾ (*Determination of admission arrangements*), section 90(1) of SSFA 1998 (*Decision to object to admission arrangements of another admissions authority*), or section 94⁽²²⁾ of SSFA 1998 (in so far as it relates to the making of appeal arrangements by the temporary governing body).

(2) Except as provided by regulation 36, the temporary governing body may not delegate to an individual functions relating to powers conferred and duties imposed on them by or under Regulations made under section 52(3) and (4) of EA 2002 (*Exclusion of pupils*)⁽²³⁾.

(3) The temporary governing body may not delegate to an individual any power of the temporary governing body to determine whether any child should be admitted to the school.

(4) The temporary governing body may not delegate functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) regulations 16(2), 17(2), 18(2), 19(2), 20(2) and 21(2) (*appointment of temporary sponsor governors or further temporary foundation governors*);
- (b) regulation 38 (*appointment of clerk*); or
- (c) regulation 46 (*suspension of temporary governors*).

Reporting to the temporary governing body following the exercise of delegated functions

49.—(1) This regulation applies where any function of the temporary governing body has been delegated to or is otherwise exercisable by a temporary governor (including the chair or vice-chair), the head teacher, head teacher designate or a committee.

(2) Any individual or committee to whom a function of the temporary governing body has been delegated or who has otherwise exercised a function of the temporary governing body must report to the temporary governing body in respect of any action taken or decision made with respect to the exercise of that function.

Proceedings of committees of the temporary governing body

50. Save as otherwise provided by these Regulations—

- (a) the temporary governing body must determine the constitution, membership and proceedings of any committee of the temporary governing body;
- (b) the membership of any committee of the temporary governing body may include temporary associate members provided that a majority of members of any such committee must be temporary governors;
- (c) the quorum for any meeting of a committee is to be determined by that committee, but in any event must be not less than three temporary governors who are members of the committee; and
- (d) the temporary governing body must appoint a chair to each committee and may remove him from office at any time.

Meetings of committees

51.—(1) Meetings of a committee must be convened by the clerk to that committee who, when exercising this function, must comply with any direction given by—

⁽²⁰⁾ Section 89A was inserted by section 47 of EA 2002, section 89D was inserted by section 46 of EIA 2006, section 90(8) was substituted by section 47(4) of EIA 2006 and section 90A was inserted by section 47(3) of EIA 2006.

⁽²¹⁾ No. 2 of 1991. Section 3(1)(cc) was inserted by paragraph 13 of Schedule 4 to EA 2002.

⁽²²⁾ Section 94 was amended by section 50 of EA 2002.

⁽²³⁾ See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 ([SI 2002/3178](#)).

- (a) the temporary governing body;
- (b) the chair of that committee so far as such direction is not inconsistent with any direction given under sub-paragraph (a).

(2) Subject to any direction given in accordance with paragraph (1), at least seven clear days in advance the clerk must give to each member of the committee and to the head teacher or head teacher designate (whether or not he is a member of the committee)—

- (a) a written notice of the meeting;
- (b) a copy of the agenda of the meeting; and
- (c) any reports or other papers to be considered at the meeting,

provided that where the chair to the committee so determines, on the ground that there are matters demanding urgent consideration, it is sufficient if the written notice of the meeting states that fact and the notice, agenda, reports and papers are given within such shorter notice period as he directs.

(3) The proceedings of a committee are not invalidated by—

- (a) any vacancy among their number; or
- (b) any defect in the appointment of any member of the committee.

(4) No vote on any matter may be taken at a meeting of a committee unless the majority of members of the committee present are temporary governors.

(5) Every question to be decided at a meeting of a committee must be determined by a majority of the votes of the members of the committee present and voting on the question.

(6) Where there is an equal division of votes the person who is acting as chair for the purposes of the meeting is to have a second or casting vote, provided that such person is a temporary governor.

(7) Minutes of the proceedings of a meeting of a committee must be drawn up by the clerk to the committee or by the person acting as the clerk for the purposes of the meeting; and must be signed (subject to the approval of the committee) by the chair of the next meeting of the committee.

(8) Subject to paragraph (9) the committee must, as soon as reasonably practicable, make available for inspection by any interested person a copy of—

- (a) the agenda for every committee meeting;
- (b) the signed minutes of every such meeting; and
- (c) any report or other such paper considered at any such meeting.

(9) There may be excluded from any item required to be made available in pursuance of paragraph (8) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the school;
- (b) a named pupil at, or candidate for admission to, the school;
- (c) any other matter that, by reason of its nature, the committee is satisfied should remain confidential.

PART 7

Transition from a Temporary Governing Body to a Governing Body

Making of instrument of government and constitution of the governing body

52.—(1) The local education authority must secure that an instrument of government has been made for each new school in accordance with regulations 29 to 31 of the Constitution Regulations before the school opening date.

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

(3) The local education authority must 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 and take effect from that date.

(4) For all other purposes, the instrument of government is to take effect from the date stated in it (“the incorporation date”).

(5) On the incorporation date the governing body of a new school is to be constituted under the instrument of government.

(6) The temporary governing body must exercise their functions under SSFA 1998, EA 2002 and under these Regulations in a manner calculated to enable the local education authority to fulfil its duties under this regulation.

New governors

53.—(1) In the case of the appointment of any governor referred to in regulation 52(3), the local education authority must 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), he must 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.

Appointment or election of new governors

54.—(1) The following paragraphs apply in relation to the appointment or election of governors required to constitute the governing body pursuant to regulation 52(3).

(2) Any parent governor must be either—

- (a) elected (after the school opening date) by the parents of registered pupils at the new school and must himself be such a parent at the time when he is elected; or
- (b) appointed (after the school opening date) by the temporary governing body in accordance with Schedule 1 to the Constitution Regulations.

(3) After the school opening date—

- (a) any staff governor is to be elected in accordance with regulation 5 of and Schedule 2 to the Constitution Regulations; and
- (b) any partnership governor is to be a person nominated and appointed in accordance with regulation 9 of and Schedule 4 to the Constitution Regulations.

Property, rights and liabilities

55. On the incorporation date—

- (a) all land and other property which, immediately before the incorporation date, was vested in the temporary governing body, and
- (b) all rights and liabilities of the temporary governing body subsisting immediately before that date,

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

Rights and liabilities under a contract of employment

56. Without prejudice to the generality of regulation 55, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract is to have effect from the incorporation date as if originally made between the employee and the governing body, and
- (b) without prejudice to sub-paragraph (a), anything done before that date by or in relation to the temporary governing body in respect of that contract or the employee is to be deemed from that date to have been done by or in relation to the 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 arises by reason only of the change of employer effected by that regulation.

PART 8

Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998

Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998

57.—(1) Regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998(24) is amended in relation to England as set out in paragraph (2).

(2) In paragraph (6)(a) of regulation 9, for “foundation governor” substitute “temporary foundation governor (within the meaning of Part 3 of the School Governance (New Schools) (England) Regulations 2007)”.

22nd March 2007

Jim Knight
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