

## SCHEDULE 3

Article 5

### Public bodies

#### SECTION 1

##### *Interpretation*

### **Public bodies**

1. In this Order, “public body” means a public body described in this section.

### **Public authorities and the National Assembly for Wales Commission**

- 2.—(1) A public authority is a public body.

- (2) In sub-paragraph (1), a “public authority” means—

- (a) a public authority within the meaning of section 3(1)(a) of the Freedom of Information Act 2000<sup>(1)</sup> (“the 2000 Act”); and
- (b) a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002<sup>(2)</sup> (“the 2002 Act”),

but not any such authority listed in sub-paragraph (4) or paragraph 4.

- (3) Where a public authority is included within the 2000 Act or the 2002 Act subject to a limitation, that limitation does not apply in respect of this Order.

- (4) The public authorities referred to in sub-paragraph (2) are—

- (a) the House of Commons;
- (b) the House of Lords;
- (c) the force or any unit described in sub-paragraph (a) or (b) of paragraph 6 (the armed forces of the Crown) of Schedule 1 to the 2000 Act;
- (d) a person described in paragraph 64 (persons nominating special constables) of Schedule 1 to the 2000 Act;
- (e) the National Assembly for Wales.

- (5) The National Assembly for Wales Commission is a public body<sup>(3)</sup>.

### **Public bodies: bodies corporate**

- 3.—(1) A body corporate is a public body where it is a body in which a public body under paragraph 2 is a majority member.

- (2) A public body is a majority member of a body (“body A”) under sub-paragraph (1) where—

- (a) the member;
- (b) a person acting on behalf of the member; or
- (c) a body corporate in which the member or person acting on its behalf is a majority member,

(any of whom is “person B”) satisfies the provisions in sub-paragraph (3).

- (3) The provisions referred to in sub-paragraph (2) are—

- (a) person B holds a majority of the voting rights in body A;

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(1) 2000 c. 36.

(2) 2002 asp 13.

(3) The Commission was established under section 27 of the Government of Wales Act 2006 (c. 32).

- (b) person B is a member of body A and has the right to appoint or remove a majority of its board of directors; or
- (c) person B is a member of body A and controls alone, pursuant to an agreement with other members, a majority of the voting rights in body A.

**Public bodies: proprietors of Academies and colleges**

4.—(1) The proprietor of—

- (a) an Academy within the meaning of section 482 of the Education Act 1996(4);
- (b) a city technology college or city college for the technology of the arts within the meaning of section 482 of that Act as originally enacted,

is a public body.

(2) Where—

- (a) a proprietor described in sub-paragraph (1) is the proprietor of more than one Academy or college; and
- (b) those Academies or colleges are situated in more than one local authority area,

the proprietor is a separate public body in respect of those Academies or colleges in different local authority areas.

(3) Where a proprietor would be required to register as a participant under Part 2—

- (a) if it were not a public body under sub-paragraph (1); and
- (b) excluding the scheme activities in respect of which it is such a public body,

the proprietor is, as applicable, a separate public body or undertaking in respect of its other scheme activities.

**Public bodies: one public body part of another**

5.—(1) Except where paragraph 4(2) or (3) applies, where a public body (“A”) is part of another public body (“B”)—

- (a) A is not a public body; and
- (b) B including A is a public body.

(2) A government department is not part of another government department.

*SECTION 2*

*Public bodies: groups*

**Groups and members**

6. In relation to public bodies—

“group” means those public bodies which are members of a group—

- (a) as provided by paragraphs 7 to 9;
- (b) further to—
  - (i) a government decision under paragraph 14;
  - (ii) a local authority decision under paragraph 16;

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(4) 1996 c. 56. Section 482 was amended by section 65(1) of the Education Act 2002 (c. 32).

or

- (c) as provided under article 20 for the purposes of that article or under article 21;  
“member” means a public body which is part of a group together with one or more other public bodies.

### **Bodies corporate**

7. Subject to a government decision under paragraph 14, where a body corporate is a public body and where the majority member is—

- (a) a government department, that body is a member of a group with that department;
- (b) the Scottish Ministers, that body is a member of a group with the Ministers;
- (c) the Welsh Ministers, the First Minister for Wales or the Counsel General, that body is a member of a group with the Welsh Assembly Government;
- (d) a relevant Northern Ireland department, that body is a member of a group with the relevant department.

### **Educational bodies: England and Wales**

8.—(1) In England and Wales—

- (a) where a public body is the governing body of a maintained school or a maintained nursery school, that public body is member of a group with the local authority which maintains the school;
- (b) a public body described in paragraph 4(1) is a member of a group with the local authority which exercises educational functions in the area in which the Academy or college is situated.

(2) In this paragraph, the following have the same meanings given to them in the 2000 Act—

- “local authority”;
- “maintained nursery school”;
- “maintained school(5)”.

### **Grant-aided schools: Northern Ireland**

9.—(1) This paragraph applies in Northern Ireland and to a public body which is a grant-aided school within the meaning of Article 2(2) of the of the Education and Libraries (Northern Ireland) Order 1986(6) (“a grant-aided school”).

(2) Subject to sub-paragraph (3), a grant-aided school is a member of a group with the Education and Library Board(7) which funds that school.

(3) Where the Education and Skills Authority has been established(8), subject to sub-paragraph (4), a grant-aided school is a member of a group with that Authority.

(4) Sub-paragraph (3) does not apply in respect of a phase where that phase has commenced before the Authority is established.

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(5) The definitions of “maintained nursery school” and “maintained school” in the Freedom of Information Act 2000 (c. 36) derive from the School Standards and Framework Act 1998 (c. 31).

(6) S.I. 1986/594 (N.I. 3). The definition of “grant-aided” under Article 2(2) was amended by the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20)).

(7) Boards are established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986.

(8) The Northern Ireland Assembly Education Bill 3/08 makes provision for the establishment of the Education and Skills Authority.

### SECTION 3

#### *Public bodies: government and local authority decisions*

#### **Government and local authority decisions**

**10.**—(1) Except in relation to the Treasury, the Secretary of State may make a government decision in relation to a government department.

(2) The Treasury may make a government decision in relation to the Treasury.

(3) Where—

(a) the Secretary of State or the Treasury intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State or the Treasury must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(4) The Secretary of State or the Treasury must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(5) A local authority decision may be made by—

(a) the Secretary of State in relation to a local government public body or a local government group in England;

(b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.

(6) A government decision—

(a) must not be made such that a public body, on its own or part of a group,—

(i) which is a participant, is no longer a participant;

(ii) which is required to be a participant, is no longer required to be a participant;

(b) may be made for the better administration of the scheme.

#### **The Scottish Ministers**

**11.**—(1) The Scottish Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Scottish Ministers.

(2) The Scottish Ministers may make a government decision described in paragraph 14(2)(a) only in respect of the public bodies described in the following paragraphs of this Schedule—

(a) paragraph 2(2)(b);

(b) paragraph 3 where the majority member is a body described in paragraph 2(2)(b).

#### **The Welsh Assembly Government and Welsh Ministers**

**12.**—(1) The Welsh Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Welsh Assembly Government.

(2) The Welsh Ministers must not make a government decision under paragraph 14(2)(a) unless the public body exercises functions in or as regards Wales and—

(i) those functions are exercised in relation to matters within the legislative competence of the National Assembly for Wales; or

- (ii) functions are exercisable in relation to that body by the Welsh Ministers, the First Minister for Wales or the Counsel General.

### **Northern Ireland departments**

**13.—**(1) The relevant Northern Ireland department may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to a relevant department.

(2) The relevant Northern Ireland department must not make a government decision under paragraph 14(2)(a) unless the Northern Ireland Assembly has legislative competence in respect of the functions of the public body.

### **Government decisions**

**14.—**(1) “A government decision” means any decision described in sub-paragraph (2) in relation to—

- (a) qualification for a phase; or
  - (b) participation during a phase or any part of a phase.
- (2) The decisions referred to in sub-paragraph (1) are—
- (a) that a public body (which is not a government department) is or is not a member of a group together with the department;
  - (b) that any part of a government department as described in the decision must register as a participant separately from the remainder of the department;
  - (c) subject to paragraph 15(2), that a government department is a member of a group with another government department;
  - (d) under paragraph 13 only and where the Education and Skills Authority referred to in paragraph 9(3) has been established, that—
    - (i) paragraph 9(2) does not apply to a grant-aided school referred to in that sub-paragraph; and
    - (ii) such a school is a member of a group with the Authority.

### **Government decisions: supplies and departments**

**15.—**(1) A government decision under paragraph 14(2)(b) must state—

- (a) which supplies of electricity, gas or fuel are supplied to which part of the department for the phase;
- (b) where a public body is a member of a group with the department, with which part of the department it is a group member.

(2) A government decision under paragraph 14(2)(c) must only be made in respect of a department which, had it been subject to article 17 on qualification for the phase, would not have been required to register as a participant.

### **Local authority decisions**

**16.—**(1) In paragraph 10(5), a “local authority decision” means a decision described in sub-paragraph (2) in relation to qualification for a phase in respect of—

- (a) a public body (“a local government public body”) which is—

- (i) in England, a public authority described in paragraphs 7(a) and 8 to 11 of Part II (local government) of Schedule 1 to the 2000 Act; or
  - (ii) in Wales, a public authority described in paragraph 7(b) of that Part;
- or
- (b) where the local government public body is a member of a group under section 2 of this Schedule (“the local government group”), such a group.
- (2) A decision referred to in sub-paragraph (1) means that a local government public body or group is a public body to which article 14(1)(e) applies.
- (3) Where such a decision is made, the decision may also provide—
- (a) that the body or group is a member of a group with another public body required to register as a participant;
  - (b) where applicable, that the decision only applies to the local government public body and not any other member of the local government group.
- (4) Where a decision is made under sub-paragraph (3)(b)—
- (a) the local government group ceases to exist; and
  - (b) other members of the group are separate public bodies.

#### **Notification of government and local authority decisions**

- 17.**—(1) The administrator must be notified in writing with the application for registration as a participant in respect of—
- (a) a government decision in relation to qualification for a phase;
  - (b) a local authority decision.
- (2) A government decision in relation to participation during a phase or any part of a phase must be notified in writing as soon as possible to the administrator.
- (3) A notification required under sub-paragraph (1) or (2) must—
- (a) state the period for which the decision has effect, which may commence before the date of the notification but must not commence in a phase which has completed; and
  - (b) identify the public bodies affected.
- (4) A government decision or local authority decision may be varied or revoked in writing.