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STATUTORY INSTRUMENTS

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**1994 No. 2003**

**EDUCATION, ENGLAND AND WALES**

**The Education (Initial Government of Grant-maintained Special Schools) Regulations 1994**

<i>Made</i>	- - - -	<i>26th July 1994</i>
<i>Laid before Parliament</i>		<i>28th July 1994</i>
<i>Coming into force</i>	- -	<i>19th August 1994</i>

In exercise of the powers conferred on the Secretary of State by sections 183(6) and (9) and 301(6) of, and paragraphs 13 and 14 of Schedule 11 to, the Education Act 1993<sup>(1)</sup>, the Secretary of State for Education, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Education (Initial Government of Grant-maintained Special Schools) Regulations 1994 and shall come into force on 19th August 1994.

(2) In the following provisions of these Regulations—

- (a) references to numbered paragraphs are to the paragraphs so numbered of Schedule 11 to the Education Act 1993 (government and conduct of grant-maintained special schools);
- (b) references to the initial instrument of government are to the initial instrument of government prescribed by regulations made under paragraph 2 of that Schedule; and
- (c) references to the date of implementation, in relation to proposals made under section 183(3)(a) or 186 of that Act, are to the date specified in the proposals as the proposed date of implementation.

**Parent governors**

2.—(1) Paragraph 5(1) shall have effect in relation to the initial instrument of government as if for “not less than three nor more than five parent governors” there were substituted—

“such number of parent governors (being not less than three nor more than five) as is specified in the proposals made under section 183(3)(a) or, as the case may be, 186 of this Act”.

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(1) 1993 c. 35; for the definitions of “prescribed” and “regulations” see section 305(1).

(2) Paragraph 5 shall have effect in relation to parent governors holding office, elected or appointed, before the date of implementation of the proposals as if—

(a) in sub-paragraph (2), for “sub-paragraph (5) below” there were substituted “sub-paragraphs (3A), (5) and (9) below and any provisions contained in regulations made under section 186 of this Act”

(b) after sub-paragraph (3), there were inserted—

“(3A) For the purposes of this paragraph “parent governor” includes, in the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, any person who, in accordance with that section, became such a governor on the incorporation date in relation to the school.”;

(c) in sub-paragraph (4), there were inserted at the beginning “Subject to sub-paragraphs (4A) and (4B) below”;

(d) after sub-paragraph (4) there were inserted—

“(4A) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act the instrument of government shall, until every person who became a parent governor on the incorporation date in relation to the school has ceased to hold office, provide—

(a) where a person who became a parent governor on the incorporation date in relation to the school was a governor of that category on the governing body of the school immediately before that date, for that person to hold office for the remainder of his term of office on the former governing body, and

(b) where a person who became a parent governor on the incorporation date in relation to the school was elected, appointed or nominated to hold office as such under regulations made under that section, for that person to hold office for a term of four years beginning with the incorporation date.

(4B) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, the instrument of government must, until every parent governor appointed before the date of implementation of the proposals has ceased to hold office, provide for any such governor to hold office—

(a) until the end of the first school term following the date of implementation of the proposals, or

(b) (if that period would exceed four years) for a term of four years.”; and

(e) after sub-paragraph (6) there were added—

“(7) Sub-paragraph (5) above does not apply, in the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, to vacancies arising before the date of implementation of the proposals.

(8) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, in relation to the election of a person as a parent governor to that governing body during the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—

(a) section 15(2) to (6) of the Education (No. 2) Act 1986 (qualifications and arrangements for election of parent and teacher governors) shall apply as it applies in relation to the election of a parent governor to the existing governing body of the school, and

(b) the governing body incorporated in pursuance of proposals under section 186 of this Act shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a parent governor,

and the instrument of government shall have effect accordingly.

(9) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, the instrument of government shall have effect as if—

- (a) before the date of implementation of the proposals the governing body had power to appoint as parent governors persons who satisfy the requirements specified in sub-paragraph (10) below, and
- (b) the first appointments were to be made before that date.

(10) The requirements referred to in sub-paragraph (9)(a) above are that—

- (a) the person appointed is a parent of a child who is likely to become a registered pupil at the school in question, or
- (b) where it is not reasonably practicable to appoint such a person—
  - (i) in the case of a school established in a hospital, the person appointed is the parent of one or more children of compulsory school age, or
  - (ii) in the case of a school not so established, the person appointed is a parent of one or more children of compulsory school age with special educational needs or, if that is also not reasonably practicable, the person appointed is the parent of a person of any age with special educational needs.”.

### **Teacher governors**

**3.—**(1) Paragraph 6(1) shall have effect in relation to the initial instrument of government as if for “either one or two teacher governors” there were substituted—

“such number of teacher governors (being either one or two) as is specified in the proposals made under section 183(3)(a) or, as the case may be, 186 of this Act”.

(2) Paragraph 6 shall have effect in relation to teacher governors holding office, elected or appointed, before the date of implementation of the proposals as if—

- (a) in sub-paragraph (2), there were inserted at the beginning “Subject to sub-paragraph (3A) and (8) below and any provisions contained in regulations made under section 186 of this Act”;
- (b) after sub-paragraph (3) there were inserted—

“(3A) For the purposes of this paragraph “teacher governor” includes, in the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, any person who, in accordance with that section, became such a governor on the incorporation date in relation to the school.”;
- (c) in sub-paragraph (4), there were inserted at the beginning “Subject to sub-paragraphs (5) and (6) below”; and
- (d) after sub-paragraph (4) there were added—

“(5) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, the instrument of government shall, until every person who became a teacher governor on the incorporation date in relation to the school has ceased to hold office, provide—

- (a) where a person who became a teacher governor on the incorporation date in relation to the school was a governor of that category on the governing body of the school immediately before that date, for that person to hold office for the remainder of his term of office on the former governing body, and
- (b) where a person who became a teacher governor on the incorporation date in relation to the school was elected, appointed or nominated to hold office as such

under regulations made under that section, for that person to hold office for a term of four years beginning with the incorporation date.

(6) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, the instrument of government must, until every teacher governor appointed before the date of implementation of the proposals has ceased to hold office, provide for any such governor to hold office—

- (a) until the end of the first school term following the date of implementation of the proposals, or
- (b) (if that period would exceed four years) for a term of four years.

(7) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, in relation to the election of a person as a teacher governor to that governing body during the period beginning with the incorporation date and ending immediately before the date of implementation of the proposals—

- (a) section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply as it applies in relation to the election of a teacher governor to the existing governing body of the school, and
- (b) the governing body incorporated in pursuance of proposals under section 186 of this Act shall inform the authority responsible for election arrangements under that Act of any vacancy arising for a teacher governor,

and the instrument of government shall have effect accordingly.

(8) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, the instrument of government shall have effect as if—

- (a) before the date of implementation of the proposals the governing body had power to appoint as teacher governors persons who satisfy the requirements specified in sub-paragraph (9) below, and
- (b) the first appointments were to be made before that date.

(9) The requirements referred to in sub-paragraph (8)(a) above are that the person appointed is, or has been, employed to work as a teacher at a special school.”.

### **Head teacher**

4.—(1) Paragraph 7 shall have effect in relation to the initial instrument of government, and the head teacher holding office before the date of implementation of proposals, as if—

- (a) at the beginning of paragraph 7 there were inserted “Subject to sub-paragraph (3) below”; and
- (b) paragraph 7 were to become sub-paragraph (1) of that paragraph and after that sub-paragraph there were inserted—

“(2) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, the instrument of government shall provide, in relation to any time before the date of implementation of the proposals when a person has been appointed to be the head teacher, for the governing body to include (as a governor ex officio) that person.

(3) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, the reference in sub-paragraph (1) above to the head teacher, in relation to any time before the date of implementation of the proposals, is to the existing head teacher.”.

## First governors

- 5.—(1) Paragraph 8 shall have effect in relation to the initial instrument of government as if—
- (a) in sub-paragraph (2), for “such number of first governors as will secure that they outnumber the other governors” there were substituted—
    - “such number of first governors (being a number which will secure that they outnumber the other governors) as is specified in the proposals made under section 183(3)(a) or, as the case may be, 186 of this Act”;
  - (b) in sub-paragraph (5), there were inserted at the beginning “Subject to sub-paragraph (5A) below”; and
  - (c) after sub-paragraph (5) there were inserted—
    - “(5A) Except where either of the provisions specified in sub-paragraph (5B) below apply, the initial instrument of government shall provide for a first governor to hold office for such term as was specified in the proposals made under section 183(3)(a) or, as the case may be, 186 of this Act as the proposed term of office for governors of that category.
    - (5B) The provisions referred to in sub-paragraph (5A) above are—
      - (a) paragraph 11(3) of this Schedule, and
      - (b) where paragraph 6(5) of Schedule 5 to this Act applies in relation to the governing body of a grant-maintained special school by virtue of regulations made under paragraph 14 of this Schedule<sup>(2)</sup>, that provision.”
- (2) Paragraph 8 shall have effect in relation to first governors holding office before the date of implementation of the proposals as if—
- (a) in sub-paragraph (3), there were inserted at the beginning “Subject to sub-paragraphs (3A) and (3B) below”;
  - (b) after sub-paragraph (3) there were inserted—
    - “(3A) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, the instrument of government, notwithstanding sub-paragraph (3) above, shall have effect in relation to the determination of the persons who are to be the first governors on the incorporation date—
      - (a) as if—
        - (i) it required the first governors to include, where it is reasonably practicable, at least two persons who on the date of their selection or nomination are registered parents of registered pupils at the school, and
        - (ii) it required the first governors to include at least two persons with experience of education for those with special educational needs, but one person might satisfy both requirements, and
      - (b) as if it required the first governors to include a person who appears to those selecting or nominating him to be a member of the local business community (and such a person might also satisfy one or both of the requirements of paragraphs (a)(i) and (ii) above).
    - (3B) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act—

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(2) See regulation 21 of the Education (Grant-maintained Special Schools) Regulations 1994 (S.I.1994/653). See also regulation 6(4)(b) below.

- (a) any provision of the instrument made by virtue of sub-paragraph (3)(a)(i) above shall not apply in relation to the appointment before the date of implementation of the proposals of any first governor, and
- (b) any provision of the instrument made by virtue of sub-paragraph (3)(b) above shall apply, in relation to the determination of the persons who are to be first governors on the incorporation date, as if references to the governing body were references to the funding authority.”;
- (c) in sub-paragraph (4), there were inserted at the beginning “Subject to sub-paragraphs (4A) and (4B) below,”; and
- (d) after sub-paragraph (4) there were inserted—
  - “(4A) In the case of a governing body incorporated in pursuance of proposals under section 183(3)(a) of this Act, “first governor” includes a person who—
    - (a) became a member of the governing body on the incorporation date in relation to the school, and
    - (b) was appointed by the funding authority as a person appearing to them to be committed to the good government and continuing viability of the proposed school.
  - (4B) In the case of a governing body incorporated in pursuance of proposals under section 186 of this Act, “first governor” includes a person who—
    - (a) became a member of the governing body on the incorporation date in relation to the school, and
    - (b) was selected or nominated under regulations made under section 186 of this Act<sup>(3)</sup> as a person appearing to those selecting or nominating him to be committed to the good government and continuing viability of the proposed school.”.

#### **Amendment of the Education (Grant-maintained Special Schools) Regulations 1994**

**6.—(1)** The Education (Grant-maintained Special Schools) Regulations 1994<sup>(4)</sup> shall be amended in accordance with the following provisions of this regulation.

- (2) In regulation 13, after paragraph (5) there shall be inserted—
  - “(5A) the name under which it is proposed the governing body should be incorporated,”.
- (3) After regulation 13 there shall be inserted—

#### **“Incorporation of governing body of a grant-maintained special school in pursuance of proposals under section 183(3)(a) of the 1993 Act**

**13A.** Section 52(1) of the 1993 Act shall apply in relation to the establishment of a school in pursuance of proposals under section 183(3)(a) of that Act with the following modifications—

- (a) the words “or adopted” and “or (as the case may be) foundation” shall be omitted;
- (b) for the words “section 51” there shall be substituted the words “section 184(4)”;
- (c) for the words “given in pursuance of paragraph 7(1)(f) of Schedule 3 to this Act” there shall be substituted “given in the notice of proposals under section 183(6) of this Act.”.

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<sup>(3)</sup> See regulation 18 of the Education (Grant-maintained Special Schools) Regulations 1994 (S.I. [1994/653](#), amended by S.I. [1994/1231](#)).

<sup>(4)</sup> S.I. [1994/653](#), amended by S.I. [1994/1231](#).

(4) In regulation 21 (governing bodies)—

- (a) after “Act” there shall be inserted the words “(other than paragraphs 5, 6(1) to (4) and 10 of that Schedule)”;
- (b) for paragraph (2) there shall be substituted—
  - “(2) In paragraph 6(5), for the words “section 64 of” there shall be substituted the words “paragraph 9 of Schedule 11 to””; and
- (c) paragraph (4) shall be omitted.

24th July 1994

*Gillian Shephard*  
Secretary of State for Education

26th July 1994

*John Redwood*  
Secretary of State for Wales

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

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## **EXPLANATORY NOTE**

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

These Regulations modify paragraphs 5 to 8 of Schedule 11 to the Education Act 1993 in relation to the initial instrument of government for the governing body of a grant-maintained special school, and in relation to the governors of such a school holding office, elected or appointed, before the date of implementation of the proposals in pursuance of which the governing body are constituted. The Regulations also make consequential amendments to the Education (Grant-maintained Special Schools) Regulations 1994.