
STATUTORY INSTRUMENTS

1998 No. 2763

EDUCATION, ENGLAND AND WALES

The Education (School Government) (Transition to New Framework) Regulations 1998

Made - - - - *10th November 1998*
Laid before Parliament *11th November 1998*
Coming into force - - *3rd December 1998*

In exercise of the powers conferred on the Secretary of State by sections 138(7) and 144 of, and paragraphs 4, 5, 15(1) and (2) and 16 of Schedule 9, paragraph 1 of Schedule 10, paragraphs 1, 2 and 3 of Schedule 11 and paragraphs 1(5) and 6 of Schedule 12 to, the School Standards and Framework Act 1998(1) and all other enabling powers, the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:

PART I

INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (School Government) (Transition to New Framework) Regulations 1998 and shall come into force on 3rd December 1998.

(2) Subject to paragraph (3), these Regulations apply in relation to—

- (a) county, voluntary, maintained special, grant-maintained or grant-maintained special schools, which will become maintained schools within the meaning of section 20(7) of the 1998 Act; and
- (b) maintained schools within the meaning of the said subsection which were formerly county, voluntary, maintained special, grant-maintained or grant-maintained special schools.

(3) These regulations do not apply in relation to a school (“an excepted school”) if—

- (a) it is a grouped school; or
- (b) in relation to any time before the appointed day, it is—

(1) 1998 c. 31; for the meaning of “prescribed” and “regulations” see section 142(1).

- (i) a county, voluntary or maintained special school proposals for the establishment of which are implemented on or after 1st January 1999; or
- (ii) a grant-maintained or grant-maintained special school which does not open before the appointed day (and for this purpose a school “opens” on the date when it first admits pupils); or
- (c) in relation to any time on or after the appointed day it is a school which was a school within sub-paragraph (b) immediately before the appointed day.

Interpretation

2.—(1) In these Regulations—

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

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

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

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

“current governing body” means the governing body of a county, voluntary, maintained special, grant-maintained or grant-maintained special school (other than the governing body of an excepted school);

“current school” means a county, voluntary, maintained special, grant-maintained or grant-maintained special school (other than an excepted school);

“instrument of government”, unless the context otherwise requires, means the instrument of government required by paragraph 6 of Schedule 12 to the 1998 Act, whether or not made by the end of the period prescribed in regulation 5;

“teacher” means a teacher employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher.

(2) A reference in these Regulations (however framed) to a school which is or is to be maintained by a local education authority is a reference to a school which is or is to be so maintained in accordance with section 20(4) or (5) of the 1998 Act.

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

“appointed day”	section 20(7) of the 1998 Act ⁽³⁾
“excepted school”	regulation 1(3) of these Regulations;
“education action zone”	section 10(1) of the 1998 Act;
“Education Action Forum”	section 11(2) of the 1998 Act;
“grouped school”	paragraph 1(7) of Schedule 10 to the 1998 Act;
“minor authority” and “area for which there are one or more minor authorities”	section 141 of the 1998 Act;

(2) 1996 c. 56.

(3) The day appointed by S.I.1998/2083 is 1st September 1999.

“transitional governing body” regulation 18(2) or 19(5) of these Regulations, as the context requires.

- (4) Unless the context otherwise requires, any reference in these Regulations to—
- (a) a numbered Part, regulation or Schedule is a reference to the Part, regulation or Schedule in these Regulations so numbered;
 - (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears; and
 - (c) a numbered sub-paragraph is a reference to the sub-paragraph so numbered in the paragraph in which the reference appears.

Conflicting regulations and instruments of government

3. These Regulations shall prevail over any conflicting provision in—
- (a) the Education (School Government) Regulations 1989(4); or
 - (b) any instrument of government within the meaning of the 1996 Act.

Breach of prescribed time limits

4. A failure by any person to discharge any duty within a time limit prescribed by these Regulations shall not relieve him of that duty.

PART II

MAKING OF THE INSTRUMENT OF GOVERNMENT

Time limits

5.—(1) Subject to paragraph (3), a local education authority shall secure that, by 1st June 1999, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act(5) for each school which will be maintained by them on the appointed day.

(2) Paragraph (3) applies in the case of a grant-maintained or grant-maintained special school which will be, or a former grant-maintained or grant-maintained special school which is, maintained by a local education authority on the appointed day, where a determination by the Secretary of State as to the school’s new category required by paragraph 7(2) of Schedule 2 to the 1998 Act has not been made on or before 7th May 1999.

(3) In any case to which this paragraph applies, the Secretary of State shall notify the local education authority of the date on which he makes the determination required by paragraph 7(2) of Schedule 2 to the 1998 Act and the local education authority shall secure that, by the end of a 3 months period beginning on the date of the determination, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act(6) for the school.

(4) The instrument of government shall take effect from the date of making for the purpose of reconstituting the governing body but, except in so far as required by regulation 18(2)(a), shall not affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government.

(4) S.I. 1989/1503, as amended by S.I. 1991/2845, 1993/3107 and 1996/2050.

(5) As modified by regulation 6 of these Regulations.

(6) As modified by regulation 6 or 7 of these Regulations depending on whether the instrument is made before or on or after the appointed day.

- (5) For all other purposes, the instrument of government shall take effect—
- (a) if made before the appointed day, from the appointed day; or
 - (b) if made on or after the appointed day, from the date of making.

(6) The current governing body, or, where the instrument of government is not made before the appointed day, the transitional governing body, shall exercise their functions under the 1998 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under this regulation and under regulation 20.

Modifications to the 1998 Act where the instrument of government is made before the appointed day

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

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

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

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

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

“(2A) Where an instrument of government is made before the appointed day for a school which will be a maintained school from the appointed day, such instrument of government—

- (a) shall determine the constitution of the governing body and other matters relating to the school as a maintained school of the category to which it will belong in accordance with Schedule 2 to this Act;
- (b) shall include a description of the ethos of the school, if it is anticipated that the school will become a foundation or voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a foundation or voluntary school with a religious character with effect from the appointed day);
- (c) shall take effect from the date of making for the purpose of reconstituting the governing body under the instrument of government but shall not (subject to any regulations made under paragraph 1(4) of Schedule 10 to this Act), affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government; and
- (d) shall take effect from the appointed day for all other purposes..”

(5) References in paragraph 3 of Schedule 12 to the 1998 Act to “the governing body” and “foundation governors” shall be treated as references to the current governing body and members of the current governing body who are foundation governors within the meaning of the 1996 Act (as the case may be).

Modifications to the 1998 Act where the instrument of government is made on or after the appointed day

7.—(1) Schedules 9 and 12 to the 1998 Act shall apply with the following modifications to enable the instrument of government for a school to be made on or after the appointed day.

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

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

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

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

“(2A) Where an instrument of government is made on or after the appointed day for a maintained school which was a county, voluntary, maintained special, grant-maintained or grant-maintained special school (within the meaning of the Education Act 1996) immediately before the appointed day, such instrument of government—

(a) shall take effect from the date of making for the purpose of reconstituting the governing body under the instrument of government but shall not affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government; and

(b) shall take effect from the date of making for all other purposes..”

(4) References in paragraph 3 of Schedule 12 to the 1998 Act to “the governing body” and “foundation governors” shall be treated as references to the transitional governing body and members of the transitional governing body who were when appointed foundation governors within the meaning of the 1996 Act (as the case may be).

Additional co-opted governors

8. Schedule 1 makes provision for the number of additional co-opted governors which may be required by the instrument of government by virtue of paragraph 15(1) and (2) of Schedule 9 to the 1998 Act, for the circumstances in which provision for such governors is authorised to be made, and for the categories of person from whom or from amongst whose members nominations for such appointments are to be sought.

Substitutes for ex officio foundation governors

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

(a) that ex officio foundation governor is unable or unwilling to act as such; or

(b) there is a vacancy in the office by virtue of which such a governorship exists.

Instrument of government pro-formas

10. The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 2 which are relevant to the category of maintained school to which the school will belong or belongs.

PART III

RECONSTITUTION OF THE GOVERNING BODY

Reconstitution of the governing body where the instrument of government is made before 1st September 1999

11. Regulations 12 to 17 apply for the purpose of reconstituting the governing body of a current school under an instrument of government made before the appointed day (whether or not by the end of the period prescribed by regulation 5).

Current governors ceasing to hold office

12.—(1) Subject to paragraph (3) any member of a current governing body who will not continue in office by virtue of these Regulations from midnight on 31st August 1999 shall cease to hold office at midnight on that day.

(2) This regulation shall not disqualify a person for election or appointment as a governor of the school in question from the appointed day.

(3) This regulation shall not apply to additional governors appointed before the appointed day under or by virtue of—

- (a) section 27 of the School Inspections Act 1996(7);
- (b) section 16 or 18 of the 1998 Act(8); or
- (c) section 230 of, or paragraph 11 of Schedule 28 to, the 1996 Act.

Current governors continuing in office

13.—(1) Paragraph (2) applies to any member of a current governing body who on 31st August 1999 is a governor who was when appointed (within the meaning of the 1996 Act)—

- (a) a co-opted governor;
- (b) a parent governor;
- (c) a teacher governor;
- (d) a foundation governor (other than an ex officio foundation governor); or
- (e) a governor appointed by the local education authority.

(2) Subject to paragraph (3) a governor to whom this paragraph applies shall continue from midnight on 31st August 1999 as a governor of the corresponding category required by the instrument of government (if any such category exists), even if he does not conform to the relevant requirements imposed by or under the 1998 Act for a governor of that category.

(3) For the purposes of paragraph (2) above and paragraph (1) of regulation 14—

- (a) a co-opted governor within the meaning of the 1996 Act shall not be treated as a governor of a category corresponding to that of additional co-opted governor; and
- (b) a foundation governor within the meaning of the 1996 Act shall not be treated as a governor of a category corresponding to that of ex officio foundation governor.

(4) In the case of a school which will be a community or voluntary primary school serving an area for which there are one or more minor authorities, any member of the current governing body who on 31st August 1999 is a governor appointed by a minor authority within the meaning of the 1996

(7) 1996 c. 57.

(8) See The School Standards and Framework Act 1998 (Intervention in Schools Causing Concern) (Modification) Regulations 1998, S.I. 1998/2248.

Act (a “minor authority governor”) shall continue from midnight on 31st August 1999 as if he were the co-opted governor nominated by a minor authority required by the instrument of government.

(5) Without prejudice to the generality of paragraph (4), a minor authority governor who continues as a governor by virtue of that paragraph shall be treated as a co-opted governor nominated by a minor authority for the purposes of section 83 of the 1998 Act.

(a) (6) (a) A member of a current governing body holding a foundation governorship ex officio shall continue from midnight on 31st August 1999 as a foundation governor if he is entitled under the instrument of government to be an ex officio foundation governor.

(b) Any other person entitled under the instrument of government to be an ex officio foundation governor shall become such a governor from midnight on 31st August 1999.

(7) A member of a current governing body who is a representative governor appointed by virtue of section 80(2) or (3) of the 1996 Act by the person or persons required to appoint a representative governor under paragraph 10 of Schedule 9 to the 1998 Act shall continue from midnight on 31st August 1999 as a representative governor under that paragraph.

(8) A head teacher shall continue as, or become, a governor from midnight on 31st August 1999 unless (before the instrument of government is made) he has given written notice to the clerk to the current governing body to the effect that he chooses not to be a governor from that date.

(9) Paragraph (8) is without prejudice to the head teacher’s right after the appointed day to give written notice to the clerk to the governing body to the effect that he chooses to be or not to be a governor.

(10) This regulation is subject to regulation 14 (surplus governors) and paragraphs 1 to 5, 8 and 10 of Schedule 6 (qualifications and disqualifications).

Surplus governors

14.—(1) This regulation applies—

- (a) where a current school has more governors of any of the categories referred to in paragraph (1) of regulation 13 than are required as governors of the corresponding category by the instrument of government;
- (b) where a current school, whose instrument of government is required to provide for one co-opted governor nominated by a minor authority, has more than one governor appointed by a minor authority within the meaning of the 1996 Act; or
- (c) where a current school has more than one governor appointed by virtue of section 80(3) of the 1996 Act by the person or persons named in the instrument of government as entitled to appoint a representative governor under paragraph 10 of Schedule 9 to the 1998 Act.

(2) Any person who would, by virtue of any provision made by or under the 1996 Act, have power to remove any such governor shall have power to remove him for the purpose of eliminating the excess referred to in paragraph (1)(a), (b) or (c) as the case may be.

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

(4) Where the excess referred to in paragraph (1)(a), (b) or (c) is not eliminated—

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

(in either case, with effect from a date before the appointed day) such number of governors of that category as is required to eliminate the excess shall cease to hold office at midnight on 31st August 1999.

- (a) (5) (a) The governors who are to cease to hold office under paragraph (4) shall be determined on the basis of seniority, the governor who has served for the shortest time being the first to cease to hold office.
- (b) Where the governors in question are of equal seniority, the governors who are to cease to hold office shall be determined before 31st August 1999 by drawing lots or, in default, by alphabetical order according to their surnames.

(6) Any procedure set out in the instrument of government, as referred to in paragraph 17 of Schedule 9 to the 1998 Act, for removal of excess foundation governors shall not apply in relation to the reconstitution of the governing body under the instrument of government pursuant to Schedule 10 to the 1998 Act.

New governors

15.—(1) The current governing body shall secure that appointments or elections of governors required by the instrument of government take place before 31st August 1999 with effect from midnight on that day.

(2) In the case of any appointment referred to in paragraph (1), other than the appointment of an additional co-opted governor, the clerk to the current governing body shall give written notice to the person who is to make the appointment unless that person has notified him of an appointment to fill the vacancy⁽⁹⁾.

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

Appointment or election of new governors

16.—(1) The following paragraphs apply in relation to the appointment or election of governors referred to in regulation 15(1).

(2) The requirement in paragraph 14(4) of Schedule 9 to the 1998 Act (foundation governors of voluntary aided schools to include parents) shall apply only in so far as it is compatible with regulation 13(2) and (6).

(3) Any co-opted governor (other than an additional co-opted governor) shall be appointed by members of the current governing body, who were not themselves appointed as co-opted governors within the meaning of the 1996 Act, in accordance with Schedule 3 to these Regulations.

(4) Any additional co-opted governor shall be appointed by members of the current governing body who were not themselves appointed as co-opted governors within the meaning of the 1996 Act.

(5) Any parent governor shall be either—

- (a) elected by parents of registered pupils at the current school and himself such a parent at the time when he is elected; or
- (b) appointed as a parent governor by the current governing body in the circumstances and subject to the provisions set out in Schedule 4.

(6) Any partnership governor shall be a person nominated as a partnership governor, and appointed as such, in accordance with Schedule 5.

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

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

- (8) Any teacher governor shall be—
- (a) a person elected by teachers at the current school; and
 - (b) such a teacher at the time when he is elected.

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

Joint appointments

17. If—

- (a) the instrument of government provides for one or more governors to be appointed by persons acting jointly, and
- (b) those persons fail to make an agreed appointment,

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

Instrument of government made but governing body not reconstituted before the appointed day: transitional governing body and reconstitution

18.—(1) This regulation applies in cases where the instrument of government for a maintained school which was a current school is made before the appointed day, but the governing body are not fully reconstituted before that day.

(2) In any case to which this regulation applies, from the appointed day until reconstitution of the governing body under the instrument of government—

- (a) the governing body shall continue as partially reconstituted under the instrument of government in accordance with regulations 12 to 17;
 - (b) the governing body so constituted shall secure that further appointments or elections of governors required by the instrument of government are made under regulations 15(2) to 17 (subject to the modifications in paragraphs (3) and (4)) and Schedules 3, 4 and 5 so that the governing body are reconstituted before 1st January 2000;
 - (c) the governing body as constituted under sub-paragraph (a) shall, for the purposes of these Regulations, be referred to as the transitional governing body.
- (3) For the purposes of paragraph (2)(b), regulation 15(2) and (3) shall apply as if—
- (a) the words “paragraph (2)(b) of regulation 18” were substituted for “paragraph (1)” in both places where that reference occurs;
 - (b) references to the current governing body were references to the transitional governing body.
- (4) For the purposes of paragraph (2)(b), regulation 16 shall be modified as follows—
- (a) for paragraph (1) of regulation 16 there shall be substituted the following—
“The following paragraphs apply in relation to the appointment or election of governors required by regulation 18(2)(b)”; and
 - (b) the provisions of regulation 16(2) to (9) shall apply as if—
 - (i) references to the current school were references to the maintained school;
 - (ii) references to the current governing body were references to the transitional governing body; and

- (iii) the words “within the meaning of the 1996 Act” were omitted in both places where they occur.

Instrument of government not made before the appointed day: transitional governing body

19.—(1) In cases where the instrument of government for a maintained school which was a current school is not made before the appointed day, the governing body shall continue from that day (pending reconstitution under the instrument of government) as constituted immediately before that day, subject to and in accordance with paragraphs (2) to (4).

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

- (a) the provisions of the 1996 Act relating to the composition of governing bodies, disqualification of governors and instruments of government; and
- (b) any regulations and instruments of government in force under those provisions (or as if made under those provisions) immediately before the appointed day.

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

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

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

(5) For the purposes of these Regulations the governing body as constituted under paragraphs (2) to (4) shall be referred to as the transitional governing body.

Instrument of government not made before the appointed day: making of the instrument of government and reconstitution of the governing body

20.—(1) Without prejudice to their duties under regulation 5, the local education authority shall secure that where regulation 19 applies, the instrument of government is made (in accordance with Schedules 9 and 12 to the 1998 Act as modified by regulation 7) so as to enable the governing body to be reconstituted as required by paragraph (2).

(2) The transitional governing body constituted in accordance with regulation 19 shall secure that the governing body is reconstituted under the instrument of government before 1st January 2000 and for the purposes of such reconstitution regulations 12 to 17 and Schedules 3, 4 and 5 shall apply subject to the modifications set out in paragraphs (3) to (6).

(3) For references to the appointed day there shall be substituted references to 1st January 2000 and accordingly for references to 31st August 1999 there shall be substituted references to 31st December 1999.

(4) Except where the context otherwise requires, for references to the current governing body there shall be substituted references to the transitional governing body.

(5) Except where the context otherwise requires, for references to the current school there shall be substituted references to the maintained school and for references to a school which will be a

community or voluntary primary school there shall be substituted references to a school which is a community or voluntary primary school.

(6) In regulation 14(2), before “power”, there shall be inserted “had”.

Elections

21.—(1) This regulation applies in relation to the election of governors required for the reconstitution of governing bodies under this Part.

(2) Subject to paragraph (3), in this regulation, “appropriate authority” means—

- (a) in relation to a school which will be or is a community, community special or voluntary controlled school, the local education authority, and,
- (b) in relation to a school which will be or is a voluntary aided, foundation or foundation special school, the current governing body before the appointed day and the transitional governing body on and after that day.

(a) (3) (a) Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of their functions under this regulation, except their functions under paragraph (4).

(b) The local education authority shall be the appropriate authority in relation to a school within paragraph (2)(b), if the current governing body or the transitional governing body (as the case may be) and the local education authority so agree.

(4) The appropriate authority shall determine—

- (a) for the purposes of an election of parent governors, any question whether a person is a parent of a registered pupil at the school;
- (b) for the purposes of an election of teacher governors, any question whether a person is a teacher at the school; and
- (c) for the purposes of an election of staff governors, any question whether a person is employed under a contract of employment or a contract for services to work at the school otherwise than as a teacher.

(5) The appropriate authority shall make all necessary arrangements for, and determine all other matters relating to, an election of parent governors, teacher governors, or staff governors.

(6) The power conferred by paragraph (5)—

- (a) includes power to make provision as to qualifying dates, but
- (b) does not include power to impose any requirement as to the minimum number of votes required to be cast for a candidate to be elected.

(7) Any election of parent governors, teacher governors or staff governors which is contested shall be held by secret ballot.

(8) The arrangements made under paragraph (5) shall, in the case of any election of a parent governor, provide for every person who is entitled to vote in the election to have an opportunity to do so by post, or, if he prefers, by having his ballot paper returned to the school by a registered pupil at the school.

(9) Where a vacancy for a parent governor is required to be filled by election, the appropriate authority shall take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—

- (a) informed of the vacancy and that it is required to be filled by election; and
- (b) informed that he is entitled to stand as a candidate, and vote, at the election; and
- (c) given an opportunity to do so.

(10) Where a local education authority is the appropriate authority that authority shall exercise its functions under this regulation in a manner calculated to enable the current governing body or transitional governing body, as the case may be, to fulfil their respective duties under regulations 15(1), 18(2) and 20(2).

Tenure of office

22.—(1) A member of the current governing body who continues as a governor of the school from midnight on 31st August 1999 (other than the head teacher or an ex officio foundation governor) shall hold office for the remainder of the term for which he was originally appointed or elected (but for no longer than 4 years from the appointed day).

(2) A member of the transitional governing body constituted in accordance with regulation 19 who continues as a governor of the school from midnight on 31st December 1999 (other than the head teacher or an ex officio foundation governor) shall hold office for the remainder of the term for which he was originally appointed or elected (but for no longer than 4 years from the appointed day).

(3) Any other governor required by the instrument of government or by regulation 19(4) (other than the head teacher, an ex officio foundation governor or a substitute governor) shall hold office for a term of four years.

(4) For the purposes of this regulation, “substitute governor” means any foundation governor appointed to act in the place of an ex officio foundation governor by virtue of regulation 9, and “the original governor” means the ex officio foundation governor in whose place the substitute governor is appointed to act.

(5) The substitute governor shall hold office until the earlier of the following—

- (a) the expiry of four years from the date of his appointment;
- (b) the date when the original governor gives written notice to the clerk to the governing body to the effect that he is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio governorship exists.

(6) This regulation shall not prevent a governor—

- (a) from being elected or appointed for a further term; or
- (b) from being disqualified by virtue of provision made under regulation 23, for continuing to hold office.

Qualifications and disqualifications

23. Schedule 6 sets out the circumstances in which a person is qualified or disqualified for holding or continuing in office, or for being elected, appointed or nominated, as a governor of a maintained school to which these Regulations apply required by an instrument of government.

8th November 1998

Estelle Morris
Minister of State,
Department for Education and Employment

10th November 1998

Peter Hain
Parliamentary Under Secretary of State, Welsh
Office

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

SCHEDULE 1

Regulation 8

ADDITIONAL CO-OPTED GOVERNORS

1. In this Schedule—

- (a) “the governing body” without more means the current governing body, or the transitional governing body, as the case may be, according to whether the instrument of government is made before the appointed day or on or after that day;
- (b) “sponsor” means a person who gives, or has given, financial assistance (which for these purposes includes benefits in kind) to a school other than pursuant to any statutory obligation.

2. Where the school has one or more sponsors, the governing body may determine that the instrument of government shall provide for the governing body of the maintained school to include such number of additional co-opted governors nominated in accordance with paragraph 3 as may be determined by the governing body, not exceeding two.

3. Nominations for such appointments shall be sought from the school’s sponsor, or (as the case may be) from any one or more of the school’s sponsors.

4. Where the school is a participating school in relation to an education action zone, the governing body may determine that the instrument of government shall provide for the governing body of the maintained school to include one additional co-opted governor nominated by the Education Action Forum for the zone in relation to which the school is a participating school.

SCHEDULE 2

Regulation 10

INSTRUMENT OF GOVERNMENT PRO-FORMAS

PART I

INSTRUMENT OF GOVERNMENT: COMMUNITY SCHOOLS

1. The name of the school is
2. The school is a community school.
3. The name of the governing body is
4. The governing body shall consist of:
 - (a) parent governors;
 - (b) LEA governors;
 - (c) teacher governors;
(if applicable)
 - (d) one staff governor;
 - (e) co-opted governors (*including any governors referred to in paragraph 6, 7 or 8 below*);
 - (f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors.....(except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).
(If applicable)
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)
(If applicable)
7. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)
(If applicable)
8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.)

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

If the instrument of government is made before 1st September 1999

- 9. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect:
 - on the date of making for the purpose of reconstituting the governing body;
 - on 1st September 1999 for all other purposes.

Or if the instrument of government is made on or after 1st September 1999

- 9. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect on the date of making.
- 10. This instrument was made by order of.....Local Education Authority on.....

PART II

INSTRUMENT OF GOVERNMENT: COMMUNITY SPECIAL SCHOOLS

1. The name of the school is
2. The school is a community special school.
3. The name of the governing body is
4. The governing body shall consist of:
 - (a) parent governors;
 - (b) LEA governors;
 - (c) teacher governors;
 - (if applicable*
 - (d) one staff governor;
 - (e) co-opted governors *(including any governors referred to in paragraph 6 or 7 below)*;
 - (f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor);
 - (if applicable*
 - (g) one representative governor appointed by.....[or.....and.....jointly].
5. Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be.....).
(If applicable
6. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)
(If applicable
7. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).

If the instrument of government is made before 1st September 1999

- 8. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect:
 - on the date of making for the purpose of reconstituting the governing body;
 - on 1 September 1999 for all other purposes.

Or if the instrument of government is made on or after 1st September 1999

- 8. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect on the date of making.

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

9. This instrument was made by order of.....Local Education Authority on.....

PART III

INSTRUMENT OF GOVERNMENT: FOUNDATION SCHOOLS AND FOUNDATION SPECIAL SCHOOLS

- 1. The name of the school is
- 2. The category to which the school belongs is
- 3. The name of the governing body is

- 4. The governing body shall consist of:
 - (a) parent governors;
 - (b) LEA governors;
 - (c) teacher governors;
(if applicable)
 - (d) one staff governor;
(if applicable)
 - (e) foundation governors;
(if applicable)
 - (e) partnership governors;
 - (f) co-opted governors (*including any governors referred to in paragraph 6 or 7 below*);
 - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).

5. Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(If applicable)

6. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)

(If applicable)

7. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).

Where the school is to have foundation governors

8. *Subject to regulation 13 of the Education (School Government) (Transition to New Framework) Regulations 1998, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.*

(If applicable)

9.—(a) The holder of the following office shall be a foundation governor ex-officio:
name of office

(b) [or and jointly] shall appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 9(a) and (b) as necessary where there is to be more than one ex officio foundation governorship.)

10. *Set out procedure for eliminating any excess in the number of foundation governors(a).*

11. *Subject to regulation 6(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, where the school is, or it is anticipated that the school will be, a foundation school which has a religious character, describe the ethos of the school.*

(a) Under regulation 14(6) of the Education (School Government) (Transition to New Framework) Regulations 1998, this procedure will not apply on transition to the new framework.

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If the instrument of government is made before 1st September 1999

12. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect:

- on the date of making for the purpose of reconstituting the governing body;
- on 1st September 1999 for all other purposes.

Or if the instrument of government is made on or after 1st September 1999

12. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect on the date of making.

13. This instrument was made by order of Local Education Authority on

PART IV

INSTRUMENT OF GOVERNMENT: VOLUNTARY CONTROLLED SCHOOLS

1. The name of the school is

2. The school is a voluntary controlled school.

3. The name of the governing body is

4. The governing body shall consist of:

- (a) parent governors;
- (b) LEA governors;
- (c) teacher governors;
(if applicable)
- (d) one staff governor;
- (e) foundation governors;
- (f) co-opted governors (*including any governors referred to in paragraph 6, 7 or 8 below*);
- (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).

5. Total number of governors..... (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be.....).

(If applicable)

6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more minor authorities in relation to the school.)

(If applicable)

7. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)

(If applicable)

8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.)

9. Subject to regulation 13 of the Education (School Government) (Transition to New Framework) Regulations 1998, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.

(If applicable)

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10. (a) The holder of the following office shall be a foundation governor ex-officio:
name of office
- (b) [or and jointly] shall appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.)

11. *Set out procedure for eliminating any excess in the number of foundation governors(a).*
12. *Subject to regulation 6(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, where the school is, or it is anticipated that the school will be, a voluntary school with a religious character, describe the ethos of the school.*

If the instrument of government is made before 1st September 1999

13. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect:
— on the date of making for the purpose of reconstituting the governing body;
— on 1st September 1999 for all other purposes.

Or if the instrument of government is made on or after 1st September 1999

13. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect on the date of making.

14. This instrument was made by order of Local Education Authority on

PART V

INSTRUMENT OF GOVERNMENT: VOLUNTARY AIDED SCHOOLS

1. The name of the school is
2. The school is a voluntary aided school.
3. The name of the governing body is
4. The governing body shall consist of:
- (a) foundation governors (except at any time when the head teacher has given notice that he chooses not to be a governor, when the number of foundation governors will be x);
 - (b) parent governors;
 - (c) LEA governors;
 - (d) teacher governors;
(if applicable)
 - (e) one staff governor;
(if applicable)
 - (f) co-opted governors (*insert total number of governors referred to in paragraphs 6, 7 or 8 below, if any*);
 - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
5. Total number of governors.....(except any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be.....).
(If applicable)
6. One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)
(If applicable)
7. co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)
(If applicable)

(a) Under regulation 14(6) of the Education (School Government) (Transition to New Framework) Regulations 1998, this procedure will not apply on transition to the new framework.

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8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school).

9. *Subject to regulation 13 of the Education (School Government) (Transition to New Framework) Regulations 1998, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.*

(If applicable)

10. (a) The holder of the following office shall be a foundation governor ex-officio:

name of office

(b)[or..... and..... jointly] shall appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that the ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.)

11. *Set out procedure for eliminating any excess in the number of foundation governors(a).*

12. *Subject to regulation 6(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, where the school is, or it is anticipated that the school will be, a voluntary school with a religious character, describe the ethos of the school.*

If the instrument of government is made before 1st September 1999

13. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect:

- on the date of making for the purpose of reconstituting the governing body;
- on 1st September 1999 for all other purposes.

Or if the instrument of government is made on or after 1st September 1999

13. Subject to regulation 5(4) of the Education (School Government) (Transition to New Framework) Regulations 1998, this instrument of government comes into effect on the date of making.

14. This instrument was made by order of..... Local Education Authority on.....

SCHEDULE 3

Regulation 16(3)

CO-OPTED GOVERNORS

1. In this Schedule—

- (a) “the governing body”, without more, means the current governing body where appointments are made before the appointed day and the transitional governing body where appointments are made on or after that day;
- (b) “the relevant governors” means the members of the governing body who were not themselves appointed as co-opted governors;
- (c) “the local community” includes the local business community.

2. In appointing a person to be a co-opted governor, the relevant governors—

- (a) shall have regard to the extent to which the governing body of the maintained school will include members of the local community;
 - (b) shall have regard to any representations made to the governing body as to the desirability of increasing the connection between the governing body of the maintained school and the local community; and
 - (c) where it appears to them that no member of the governing body of the maintained school will otherwise be a member of the local community or that it is desirable to increase the number of governors who will be members of the local community, shall co-opt a person who appears to them to be a member of that community.
3. For the purposes of paragraphs 2(a) and (c), in considering the extent to which the governing body of the maintained school will include members of the local community, the following governors shall not be regarded as members of the local community—
- (a) LEA governors;
 - (b) parent governors;
 - (c) staff governors;
 - (d) teacher governors;
 - (e) partnership governors;
 - (f) additional co-opted governors nominated by minor authorities; and
 - (g) the head teacher.

SCHEDULE 4

Regulation 16(5)

PARENT GOVERNORS

1. In this Schedule—
- (a) “appropriate authority” has the same meaning as in regulation 21(2) and (3) (elections);
 - (b) “school” means the current school where appointments are made before the appointed day or the maintained school where appointments are made on or after that day;
 - (c) “governing body” means the current governing body where appointments are made before the appointed day or the transitional governing body where appointments are made on or after that day.
- 2.—(1) This paragraph applies to any school which will be or is a maintained school, other than a community or foundation special school established in a hospital.
- (2) In the case of a school to which this paragraph applies, parent governors shall be appointed by the governing body if—
- (a) at least 50 per cent. of the registered pupils at the school are boarders; and
 - (b) it would, in the opinion of the appropriate authority, be impracticable for there to be an election of parent governors.
3. In the case of a school which will be or is a community or foundation special school established in a hospital, parent governors shall be appointed by the governing body, where, in the opinion of the appropriate authority, it is likely to be impracticable for there to be an election of parent governors.
4. At any school which will be or is a maintained school, the number of parent governors required shall be made up by parent governors appointed by the governing body if—

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- (a) one or more vacancies of parent governors are required to be filled by election; and
 - (b) the number of parents standing for election is less than the number of vacancies.
5. Except where paragraph 6 applies, in appointing a parent governor under this Schedule the governing body shall appoint—
- (a) a person who is the parent of a registered pupil at the school; or
 - (b) where it is not reasonably practicable to do so, a person who is the parent of a child of compulsory school age.
- 6.—(1) Where the school will be or is a community or foundation special school not established in a hospital, in appointing a parent governor under paragraph 2(2) or 4, the governing body shall appoint—
- (a) a person who is the parent of a registered pupil at the school;
 - (b) a person who is the parent of a child of compulsory school age with special educational needs;
 - (c) a person who is the parent of a person of any age with special educational needs; or
 - (d) a person who is the parent of a child of compulsory school age.
- (2) The governing body shall only appoint a person referred to in sub-paragraph (1)(b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the provision in that sub-paragraph which immediately precedes it.

SCHEDULE 5

Regulation 16(6)

PARTNERSHIP GOVERNORS

1. In this Schedule,
- (a) “school” means the current school where appointments are made before the appointed day or the maintained school where appointments are made on or after that day;
 - (b) “governing body” means the current governing body where appointments are made before the appointed day or the transitional governing body where appointments are made on or after that day.
2. Where a partnership governor is required, the governing body shall seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school as they consider appropriate.
3. No person shall nominate for appointment, or appoint, a person as a partnership governor unless—
- (a) in the case of a person nominating himself, he considers himself to be from the community served by the school and committed to the good government and success of the school; and
 - (b) in any other case, he is satisfied that the nominee or appointee appears to be from the community served by the school and committed to the good government and success of the school.
- 4.—(1) In the case of a school which will be or is a foundation special school without a foundation, the governing body shall in appointing partnership governors secure that at least one partnership governor is a person with experience of education for children with special educational needs.

(2) In seeking nominations for partnership governors for a school within sub-paragraph (1) the governing body shall take such steps as are reasonably practicable to secure that persons making nominations are aware of the requirement in that sub-paragraph.

5. Where a partnership governor is required, the governing body shall take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—

- (a) informed that he is entitled to nominate persons for appointment as partnership governors; and
- (b) informed about the procedures to be followed in making nominations.

6. Subject to paragraph 8(2), no member of the governing body may nominate a person for appointment as a partnership governor.

7. The governing body shall make all necessary arrangements for, and determine all other matters relating to, the nomination of partnership governors.

8.—(1) The governing body shall appoint such number of partnership governors as are required by the instrument of government from among eligible nominees.

(2) If—

- (a) the number of eligible nominees is less than the number of vacancies; or
- (b) in the case of a foundation special school at which a partnership governor with experience of education for children with special educational needs is required, no eligible nominee has such experience,

the number of partnership governors required shall be made up by persons selected by the governing body who are eligible and meet the requirements for appointment.

9. Where the governing body make an appointment under paragraph 8(2) having rejected any person nominated by a parent or the community served by the school they shall explain the reason for that decision to the local education authority and the person rejected.

SCHEDULE 6

Regulation 23

QUALIFICATIONS AND DISQUALIFICATIONS

1. In this Schedule, unless the context otherwise requires, any reference to a maintained school means a maintained school to which these Regulations apply and at which the governing body are constituted or partly constituted under an instrument of government (and consequently does include a maintained school with a transitional governing body constituted under regulation 18(2) but does not include a maintained school with a transitional governing body constituted under regulation 19).

2.—(1) No person shall be qualified for membership of a governing body of a maintained school unless he is aged 18 or over at the date of his election or appointment.

(2) No person shall at any time hold more than one governorship of the same maintained school.

(3) Subject to paragraphs 6 and 9, the fact that a person is qualified to be elected or appointed as a governor of a particular category at a maintained school does not disqualify him for election or appointment or from continuing as a governor of any other category at that school.

3.—(1) A person who would otherwise continue in office as, or be appointed or elected to be, a member of the governing body of a maintained school shall not so continue as or be so appointed

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or elected if this would mean that he would be a member of the governing body of more than two relevant schools.

(2) For the purposes of sub-paragraph (1) no account shall be taken of ex officio governorships or additional governorships under section 27 of the School Inspections Act 1996⁽¹⁰⁾ or section 16 or 18 of the 1998 Act.

(3) Sub-paragraph (4) applies to a person who continues in office as, or becomes, an ex officio member of the governing body of a maintained school and is an ex officio member of the governing body of more than two relevant schools.

(4) A person to whom this paragraph applies shall be disqualified for continuing to hold office as an ex officio governor of any maintained school unless that school is for the time being a designated school.

(5) For the purposes of sub-paragraph (4), a designated school is a school designated by the ex officio governor, in accordance with sub-paragraph (6), by notice in writing to the clerk to the governing body of the school and to the clerk to the governing body of any other relevant school whose instrument of government provides for him to be an ex officio member.

(6) A person to whom paragraph (4) applies may designate one or two maintained schools provided that the number of governing bodies of relevant schools of which he will be an ex officio member shall be no more than two.

(7) For the purpose of this paragraph, a relevant school is a maintained school at which the governing body conducting the school are constituted or partly constituted under an instrument of government made under Schedule 12 to the 1998 Act, whether or not these Regulations apply to that school.

4.—(1) Subject to the following provisions of this paragraph, a person shall be disqualified for holding or for continuing to hold office as a governor of a maintained school if he has been adjudged bankrupt or has made a composition or arrangement with his creditors; and a member or proposed member of the governing body of a maintained school on becoming so disqualified, shall give written notice of that fact to the clerk to the governing body of the school which will be or is a maintained school.

(2) Where a person is disqualified by reason of his having been adjudged bankrupt, that disqualification shall cease—

- (a) on his discharge from bankruptcy; or
- (b) if the bankruptcy order is previously annulled, on the date of the annulment.

(3) Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the last such payment is made and in any other case it shall cease on the expiration of three years from the date on which the terms of the deed of composition or arrangement are fulfilled.

5.—(1) Subject to sub-paragraph (6), a person shall be disqualified for holding, or for continuing to hold, office as a governor of a maintained school where any of sub-paragraphs (3) to (5) or (7) apply to him.

(2) In cases where a member of a current governing body or a transitional governing body has continued in office as a governor of a maintained school, in this paragraph, a reference to a person's appointment or election as governor, or becoming a governor ex officio, is a reference to his original appointment or election as a governor, or becoming a governor ex officio, within the meaning of the 1996 Act.

(3) This sub-paragraph applies to a person if—

⁽¹⁰⁾ 1996 c. 57.

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- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor ex officio; or
- (b) since his appointment or election as governor or, as the case may be, since he became a governor ex officio,

he has been convicted, whether in the United Kingdom or elsewhere, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

(4) This sub-paragraph applies to a person if within the period of 20 years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor ex officio, he has been convicted as aforesaid of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.

(5) This sub-paragraph applies to a person if he has at any time been convicted as aforesaid of any offence and he has had passed on him a sentence of imprisonment for a period of not less than five years.

(6) For the purposes of sub-paragraphs (3) to (5), there shall be disregarded any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom.

(7) This sub-paragraph applies to a person if—

- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor ex officio; or
- (b) since his appointment or election as governor or, as the case may be, since he became a governor ex officio,

he has been convicted under section 547 of the 1996 Act (nuisance and disturbance on education premises) of an offence which took place on the premises of a school maintained by a local education authority or a grant-maintained school, and has been sentenced to a fine.

(8) Where, by virtue of this paragraph—

- (a) a person becomes disqualified for holding, or for continuing to hold, office as a governor of a maintained school; and
- (b) he is, or is proposed, to become such a governor,

he shall upon becoming so disqualified give written notice of that fact to the clerk to the governing body of the school which will be or is a maintained school.

6. A person shall be disqualified for appointment as a co-opted governor of a maintained school other than an additional co-opted governor if he is—

- (a) a registered pupil at the school;
- (b) eligible to be a staff governor or a teacher governor of the school; or
- (c) an elected member of the local education authority.

7. A person shall be disqualified for appointment as a parent governor of a maintained school if he is—

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

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- (c) an employee of the governing body of any school maintained by the local education authority, or any grant-maintained school or grant-maintained special school situated in the area of the local education authority,

unless he is a parent of a registered pupil at the school.

8. A person shall not be disqualified for continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at the school.

9. A person shall be disqualified for nomination or appointment as a partnership governor of a maintained school if he is—

- (a) a parent of a registered pupil at the school;
- (b) eligible to be a staff governor or a teacher governor at the school; or
- (c) an elected member or employee of the local education authority.

10. A teacher governor or a staff governor of a maintained school shall, upon ceasing to be employed at the school, be disqualified for continuing to hold office as such a governor.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the preparation of instruments of government and the reconstitution of governing bodies under those instruments as required by Schedules 10 and 12 to the School Standards and Framework Act 1998 (“the 1998 Act”).

The Regulations apply to schools which are currently county, voluntary, maintained special, grant-maintained or grant-maintained special schools, except new schools and schools grouped under one governing body.

Part II of the Regulations provides for the making of the instrument of government in preparation for the implementation of the new framework for schools under the 1998 Act on 1st September 1999.

Local education authorities are to secure that instruments of government are made in accordance with Schedule 12 to the 1998 Act by 1st June 1999. The only exception is for grant-maintained or grant-maintained special schools where a determination by the Secretary of State as to the school’s new category is required and has not been made by 7th May 1999. In those cases, the time limit for making the instrument is 3 months from the date of the Secretary of State’s determination.

Provision is made by Part II for the contents of the instruments of government and in particular in Schedule 1 for the circumstances in which co-opted governors may be appointed in accordance with paragraph 15(1) and (2) of Schedule 9 to the 1998 Act. The form of instruments of government is prescribed in Schedule 2.

Part III provides for the reconstitution of governing bodies under instruments of government.

Regulations 12 to 17 apply where the instrument of government is made before 1st September 1999 (whether or not by the end of the period prescribed in Part II).

Under regulations 12 and 13, governors will cease to hold office from midnight on 31st August 1999, unless they correspond to the categories of governor required by the new instrument of government.

If there are more existing governors of any particular category than are required by the instrument of government, the surplus will be reduced in accordance with the procedure in regulation 14.

Regulation 15 requires posts not filled by existing governors in accordance with regulation 13 to be filled by appointing or electing governors in advance ready to take effect from midnight on 31st August 1999. Schedules 3, 4 and 5 provide for the appointment of co-opted, parent and partnership governors.

Regulation 18 applies where the instrument of government has been made before 1st September 1999, but the governing body are not fully reconstituted ready for that day. In such circumstances, the governing body continue as partially reconstituted until they are fully reconstituted. They must be fully reconstituted before 1st January 2000.

Regulations 19 and 20 apply in cases where the instrument of government is not made before the appointed day. In such cases the governing body continues broadly as constituted immediately before the appointed day, until the instrument of government is made and the governing body reconstituted under that instrument with effect from midnight on 31st December 1999.

Regulation 21 makes provision for elections of parent, teacher and staff governors.

Regulation 22 sets out the lengths of time governors will hold office.

Regulation 23 and Schedule 6 deal with disqualification of governors required by the new instruments of government.