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STATUTORY INSTRUMENTS

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**1999 No. 2163**

**The Education (School Government)  
(England) Regulations 1999**

**PART II**

**INSTRUMENTS OF GOVERNMENT AND GOVERNING BODY COMPOSITION**

**Application**

4. Regulations 6 to 13 apply in relation to any maintained school conducted by an incorporated governing body constituted under an instrument of government (but not including a maintained school with a transitional governing body partly constituted under an instrument in accordance with regulation 18(2) of the First Transitional Regulations)(1).

**Copies of instruments of government**

5.—(1) The local education authority which maintains or will maintain a school or a new school for which an instrument of government has been made shall secure that the persons set out in paragraph (2) are provided (free of charge) with—

- (a) a copy of the school's instrument of government; and
- (b) where any variation is made to the school's instrument of government—
  - (i) a copy of the order varying the instrument; and
  - (ii) a consolidated version of the instrument of government incorporating all variations made by order of the local education authority (other than any variations which have ceased to have effect).

(2) In relation to any school referred to in paragraph (1), the persons who are to be provided with the information referred to in paragraph (1)(a) and (b) are—

- (i) every member of the governing body of the school;
- (ii) every member of the temporary governing body of the school;
- (iii) any trustees under a trust deed relating to the school; and
- (iv) in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority or, in the case of a new school which has not opened, the diocesan authority which will be the appropriate diocesan authority when the school opens.

**Additional co-opted governors**

6.—(1) Schedule 1 makes provision for the number of additional co-opted governors which may be required by the instrument of government for a maintained school by virtue of paragraph 15(1)

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(1) This Part should be read together with Schedules 9 and 12 to the 1998 Act. The constitution or reconstitution of the governing body under the first instrument of government made on transition for the new schools framework is dealt with in the First Transitional Regulations, or the School Organisation Regulations.

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.

(2) Subject to paragraph (3), if the governing body make or revoke a determination under paragraph 15(1) of Schedule 9 to the 1998 Act, the instrument of government shall be varied at the instance of the governing body in consequence<sup>(2)</sup>.

(3) Paragraph (2) does not apply where the governing body make or revoke a determination under paragraph 15(1) of Schedule 9 to the 1998 Act in anticipation of the replacement of the instrument of government on a change of category pursuant to regulations under Schedule 8 to the 1998 Act.

### **Representative governors**

7.—(1) If there is any change in the body or bodies entitled to appoint a representative governor at a community special school (or in whether the school has a representative governor) by virtue of paragraph 10 of Schedule 9 to the 1998 Act, the instrument of government shall be varied at the instance of the governing body in consequence.

(2) Paragraph (1) does not apply if the change in question is related to a change of category (as referred to in regulation 6(3)) and the instrument of government is to be replaced.

### **Substitute foundation governors**

8. The instrument of government for a maintained school 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.

### **Appointment of parent and partnership governors**

9.—(1) Schedule 2 sets out the circumstances in which parent governors required by the instrument of government shall be appointed by the governing body, and the requirements which must be complied with in relation to any such appointment<sup>(3)</sup>.

(2) Schedule 3 provides for the nomination and appointment of partnership governors required by the instrument of government.

### **Notification of vacancies and appointments**

10.—(1) Subject to paragraphs (2) and (3), where a vacancy in the office of an appointed member of the governing body arises, the clerk to the governing body shall as soon as is reasonably practicable give notice in writing of that fact to the person or persons entitled to appoint a person to that office.

(2) Subject to paragraph (3), the clerk to the governing body shall, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of the expiry of that term to the person or persons entitled to appoint a person to that office.

(3) Paragraphs (1) and (2) shall not apply where the person or persons entitled to appoint a person to the office in question have already notified the clerk to the governing body in writing of the person appointed by them.

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(2) The procedure for varying the instrument of government is in paragraph 4 of Schedule 12 to the 1998 Act.

(3) Generally parent governors are elected. See paragraph 4 of Schedule 9 to the 1998 Act.

(4) Where any person or persons make an appointment to the governing body, they shall give written notice of the appointment to the clerk to the governing body specifying the name and usual place of residence of the person so appointed.

(5) For the purposes of this regulation, “appointed member” means—

- (a) a foundation governor;
- (b) an LEA governor;
- (c) a co-opted governor;
- (d) a representative governor; or
- (e) a partnership governor.

### **Joint appointments**

11. If—

- (a) the instrument of government for a maintained school provides for one or more governors to be appointed by persons acting jointly, and
- (b) those persons fail to make an agreed appointment, the appointment shall be made by, or in accordance with a direction given by, the Secretary of State.

### **Elections**

12. Schedule 4 makes provision for the election of governors.

### **Surplus governors**

13.—(1) Where—

- (a) a maintained school has more governors of a particular category (other than foundation governors)<sup>(4)</sup> than are provided for by the instrument of government for the school in accordance with Part II of Schedule 9 to the 1998 Act, and
- (b) the excess is not eliminated by the required number of governors of that category resigning, such number of governors of that category as is required to eliminate the excess shall cease to hold office in accordance with paragraphs (2) and (3).

(2) The governors who are to cease to hold office shall be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it shall be done by drawing lots.

(4) For the purposes of this regulation, additional co-opted governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

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(4) Excess foundation governors are to be eliminated in accordance with the procedure set out in the instrument of government for the school.