

---

STATUTORY INSTRUMENTS

---

**1999 No. 362**

**The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999**

**PART I**

**INTRODUCTION**

**Citation, commencement and application**

**1.**—(1) These Regulations may be cited as the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 and shall come into force on 10th March 1999.

(2) Subject to regulation 3, Part II of these Regulations applies—

- (a) in relation to any time before the appointed day, to any county, voluntary or maintained special school proposals for the establishment of which are implemented on or after 1st January 1999 and which has a temporary governing body;
- (b) in relation to any time on or after the appointed day, to any maintained school which fell within sub-paragraph (a) immediately before the appointed day;
- (c) in relation to any time before the appointed day, to any proposed school (proposals for the establishment of which have been approved, or have effect under section 504(3) of the Education Act 1996(1) as if approved, under section 37, 43, or 340(4) of the 1996 Act or have been determined to be implemented under section 38 of that Act but in either case have not yet been implemented) which has a temporary governing body;
- (d) in relation to any time on or after the appointed day to any school or proposed school which fell within sub-paragraph (c) immediately before the appointed day.

(3) Part III of these Regulations applies—

- (a) in relation to any time before the appointed day, to any grant-maintained school which does not open before the appointed day (and for the purposes of these Regulations a school “opens” on the date when it first admits pupils);
- (b) in relation to any time on or after the appointed day to any maintained school which fell within sub-paragraph (a) immediately before the appointed day.

(4) Subject to regulation 3, Part IV of these Regulations applies—

- (a) in relation to any time before the appointed day, to any school grouped under section 89 or 280 of the 1996 Act;
- (b) in relation to any time on or after the appointed day, to any maintained school which fell within sub-paragraph (a) immediately before the appointed day.

(5) Part V of these Regulations applies—

- (a) in relation to any time before the appointed day, to county, voluntary, maintained special, grant-maintained or grant-maintained special schools which will become maintained schools;
  - (b) in relation to any time on or after the appointed day, to maintained schools which were schools within sub-paragraph (a) immediately before the appointed day.
- (6) Part VI of these Regulations applies to maintained schools which, immediately before the appointed day, were grant-maintained schools or grant-maintained special schools.
- (7) Part VII of these Regulations applies—
- (a) in relation to any time before the appointed day, to county, voluntary, maintained special, grant-maintained or grant-maintained special schools, which will become maintained schools;
  - (b) in relation to any time on or after the appointed day, to maintained schools which were formerly county, voluntary, maintained special, grant-maintained or grant-maintained special schools
- except schools falling within paragraph (2), (3) or (4) above.

## Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

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

“the 1996 Act” means the Education Act 1996;

“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;

“employee of the local education authority” means a person employed by the local education authority in connection with their functions as a local education authority;

“the First Transitional Regulations” means the Education (School Government) (Transition to New Framework) Regulations 1998(2);

“GM governing body” means the governing body of a new GM school constituted under the 1996 Act before the appointed day;

“grouped governing body” means the governing body of a grouped school constituted under the 1996 Act before the appointed day;

“group” means two or more schools conducted by a grouped governing body or a grouped transitional governing body, as the case may be;

“grouped school” means a school referred to in regulation 1(4);

“instrument of government” means the first instrument of government for a maintained school within the meaning in section 37(1) of the 1998 Act;

“new GM school” means a school referred to in regulation 1(3);

“new LEA maintained school” means a school or proposed school referred to in regulation 1(2);

“representative governor” means a representative governor required by virtue of paragraph 10 of Schedule 9 to the 1998 Act;

“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;

“temporary governing body” means the temporary governing body of a new LEA maintained school constituted under the 1996 Act before the appointed day;

“local education authority” in relation to any proposed school or school which will become or is a maintained school means the local education authority which will maintain or maintains the proposed school or school on or after the appointed day.

(2) A reference in these Regulations (however expressed) to a proposed school or school which is to be or is maintained by a local education authority is a reference to a proposed school or school which is to be or is—

- (a) so maintained in accordance with section 20(4) or (5) of the 1998 Act; or
- (b) treated by regulation 6 as established as a maintained school.

(3) A reference in these Regulations to written notice to the clerk to the governing body of the school includes written notice to the clerk to the temporary governing body, the transitional governing body, the GM governing body, the GM transitional governing body, the grouped governing body or the grouped transitional governing body, as the case may be.

(4) Except where the context otherwise requires, the words or expression 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 provision referred to in the second column of that table:

---

“actual incorporation date” (for the purposes of Part II)	regulation 14;
“actual incorporation date” (for the purposes of Part IV)	regulation 47;
“appointed day”	section 20(7) of the 1998 Act(3);
“education action zone”	section 10(1) of the 1998 Act;
“Education Action Forum”	section 11(2) of the 1998 Act;
“GM transitional governing body”	regulation 30;
“grouped transitional governing body”	regulation 49;
“maintained school”	section 20(7) of the 1998 Act;
“minor authority” and “area for which there are one or more minor authorities”	section 141 of the 1998 Act;
“reconstitution date”	regulation 31;
“school’s opening date”	regulation 1(3)(a);
“transitional governing body”	regulation 13.

---

- (5) 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

---

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

- (c) a numbered sub-paragraph is a reference to the sub-paragraph so numbered in the paragraph in which the reference appears.

### **New and grouped schools: interpretation**

3.—(1) This regulation applies for the purposes of—

- (a) these Regulations;
- (b) the First Transitional Regulations; and
- (c) paragraph 1 of Schedule 10 to the 1998 Act.

(2) A school which has a temporary governing body on 31st August 1999 has a temporary governing body immediately before the appointed day even if it has a permanent governing body constituted under an instrument of government with effect from midnight on 31st August 1999.

(3) In the case of a group comprising two schools grouped under section 89 of the 1996 Act immediately before 31st August 1999, where one of the schools is discontinued with effect from 31st August 1999, the other school will be treated as a school grouped under section 89 of the 1996 Act immediately before the appointed day.

(3) A school grouped under section 89 or 280 of the 1996 Act on 31st August 1999 is treated as grouped under section 89 or 280 of the 1996 Act immediately before the appointed day even if he has a governing body constituted under an instrument of government with effect from midnight on 31 st August 1999.

### **Conflicting regulations and instruments of government**

4. 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**

5. 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**

### **NEW LEA MAINTAINED SCHOOLS**

#### **Allocation of new LEA maintained schools to new categories**

6.—(1) This regulation applies to a proposed school proposals for the establishment of which—

- (a) have been approved, or have effect under section 504(3) of the 1996 Act as if approved, under section 37, 43 or 340(4) of that Act before the appointed day, or
- (b) have been determined to be implemented by the local education authority, under section 38 of that Act, before the appointed day,

but have not been implemented before the appointed day and for which a temporary governing body have been constituted under section 96 or 97 of, and Schedule 9 to, the 1996 Act.

(2) In relation to any proposed school to which this regulation applies, such proposals, if published under section 35(1) of the 1996 Act or if having effect under section 504(3) of the 1996 Act as having been made by a local education authority shall, on the appointed day, be treated as—

- (a) published under section 28(1)(a) of the 1998 Act as proposals to establish a new community school, and
- (b) approved, or determined to be implemented, under paragraph 3 or 4 or, as the case may be, paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a community school and treated as established as such under section 28 of that Act.

(3) In relation to any proposed school to which this regulation applies, such proposals, if published under section 41(1) of the 1996 Act, shall on the appointed day, be treated—

- (a) where the Secretary of State has made an order under section 48(1)(a) of the 1996 Act as—
  - (i) proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary controlled school, and
  - (ii) approved under paragraph 3 of Schedule 6 to the 1998 Act or, as the case may be, approved or determined to be implemented under paragraph 8 or 9 of that Schedule,and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a voluntary controlled school and treated as established as such under section 28 of that Act; and
- (b) where the Secretary of State has made an order under section 48(1)(b) of the 1996 Act, as—
  - (i) proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary aided school, and
  - (ii) approved under paragraph 3 or, as the case may be, approved or determined to be implemented under paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a voluntary aided school and treated as established as such under section 28 of that Act.

(4) In relation to any proposed school to which this regulation applies, if notice of the proposal to establish the school was served pursuant to section 339(1)(a) of the 1996 Act, or if the proposals have effect under section 504(3) of the 1996 Act as having been made by the local education authority in exercise of their powers to establish a school which is specially organised to make special educational provision for pupils with special educational needs, the proposals shall on the appointed day, be treated as—

- (a) published under section 31(1)(a) of the 1998 Act to establish a new community special school; and
- (b) approved or determined to be implemented under paragraph 3 or 4 or, as the case may be, paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a community special school and treated as established as such under section 31 of that Act.

(5) Without prejudice to regulation 13(5), where proposals fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act by virtue of this regulation, section 44 of the 1998 Act(5) shall not apply.(6)

### **Making instrument of government**

7.—(1) A local education authority shall secure that by 1st June 1999, or the school’s opening date if later, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act(7) for each new LEA maintained school which will be or is maintained by them.

- (a) (2) (a) The instrument of government shall take effect from the date of making for the purpose of constituting the governing body but shall not affect the constitution or name of the governing body conducting the new LEA maintained school pending constitution of the permanent governing body under the instrument of government.
- (b) For all other purposes, the instrument of government shall take effect—
- (i) if made before the appointed day, from the appointed day or the school’s opening date if later;
  - (ii) if made on or after the appointed day, from the date of making or the school’s opening date if later.

(3) The temporary 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.

### **Modifications to the 1998 Act to enable the instrument of government to be made before the appointed day**

8.—(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 new LEA maintained school to be made before 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 expressed) shall be treated as references to the area which it appears to the local education authority will be served by the new LEA maintained school when it is a maintained school.

(3) In relation to a new LEA maintained school which will be a community special school not established in a hospital, paragraph 10 of Schedule 9 to the 1998 Act shall apply as if there were substituted for sub-paragraph (6)(a) the following—

- “(a) if a voluntary organisation is designated by the local education authority, in relation to the school or proposed school which will be a community special school, as the appropriate voluntary organisation concerned with matters in respect of which the community special school will be specially organised, a representative governor shall be appointed by that organisation; or”.

(4) 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 temporary governing body so determine”.

---

(5) Section 44 of the 1998 Act is not yet in force, except for section 44(5) and (6).

(6) The proposed school already has a temporary governing body constituted under the 1996 Act which continues as a transitional governing body from the appointed day under this Part. This Part provides for the making of the instrument of government and constitution of the governing body under the 1998 Act.

(7) As modified by regulation 8 or 9 of these Regulations depending on whether the instrument is made before or on or after the appointed day.

- (5) 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—
    - (a) “(2A) Where an instrument of government is made before the appointed day for a school which will have a temporary governing body (within the meaning of the Education Act 1996) immediately before the appointed day, such instrument of government:
      - (i) 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 under this Act;
      - (ii) shall include a description of the ethos of the school, if it is anticipated that the school will become a voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a voluntary school with a religious character);
      - (iii) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the school pending constitution of the permanent governing body under the instrument of government; and
      - (iv) for all other purposes, shall take effect from the appointed day or the school’s opening date if later.
    - (b) In this sub-paragraph and sub-paragraphs (3) and (4), references to “school” include a proposed school.”; and
  - (c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a school referred to in paragraph (2A), the school shall be treated as having as registered pupils the maximum number of pupils referred to in the relevant proposals within the meaning of section 181(2) of the Education Act 1996) or, if no such number is referred to, such number as the local education authority may determine.”.
- (6) References in paragraph 3 of Schedule 12 to the 1998 Act to—
- (a) “the governing body” and “foundation governors” shall be treated as references to the temporary governing body and temporary foundation governors within the meaning of the 1996 Act (as the case may be);
  - (b) “the school” shall be treated as including the proposed school; and
  - (c) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school or proposed school will belong when it is a maintained school.

**Modifications to the 1998 Act to enable the instrument of government to be made on or after the appointed day**

9.—(1) Section 141 of, and Schedules 9 and 12 to, the 1998 Act shall apply with the following modifications to enable the instrument of government for a new LEA maintained school to be made on or after the appointed day.

- (2) Regulation 8(2) shall apply.
- (3) Regulation 8(3) shall apply, subject to the omission of “school or” before “proposed school”.

(4) 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”.

(5) 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 paragraph (2A), the date or 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 school or proposed school which had a temporary governing body immediately before the appointed day, such instrument of government:

(a) in the case of a proposed school, shall determine the constitution of the governing body and other matters relating to the proposed school as a maintained school of the category to which it will belong under regulations made under paragraph 10 of Schedule 2 to this Act;

(b) in the case of a proposed school, shall include a description of the ethos of the school, if it is anticipated that the school will become a voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a voluntary school with a religious character);

(c) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the proposed school or school pending constitution of the permanent governing body under the instrument of government; and

(d) for all other purposes, shall take effect from the date of making, or the school’s opening date if later.”; and

(c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a school or proposed school referred to in paragraph (2A), the school or proposed school shall be treated as having as registered pupils the maximum number of pupils referred to in the relevant proposals (within the meaning of section 181(2) of the Education Act 1996, whether or not that section is still in force) or, if no such number is referred to, such number as the local education authority may determine.”.

(6) References in paragraph 3 of Schedule 12 to the 1998 Act to—

(a) “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 temporary foundation governors within the meaning of the 1996 Act (as the case may be);

(b) “the school” shall be treated as including the proposed school;

(c) “the category of school to which the school belongs” shall include references to the category of schools which the proposed school will belong when it is a maintained school.

### **Additional co-opted governors**

**10.** 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**

**11.** 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**

**12.—(1)** 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 new LEA maintained school will belong or belongs.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.

(3) The temporary governing body or the transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

### **The transitional governing body**

**13.—(1)** The temporary governing body<sup>(8)</sup> shall continue in existence until the later of—

- (a) the appointed day;
- (b) midnight on the actual incorporation date;
- (c) fulfilment of their obligations under these Regulations and completion of any transfers required by regulations 22 to 25;

as constituted immediately before the appointed day, subject to this regulation.

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

- (a) the provisions of the 1996 Act relating to the composition of temporary governing bodies, and qualification and disqualification of temporary governors;
- (b) any regulations in force under those provisions immediately before the appointed day; and
- (c) any arrangement under section 96 or 97 of the 1996 Act in force immediately before the appointed day.

(3) The relevant provisions shall have effect for the purpose of determining the composition of the transitional governing body from time to time and the circumstances in which a person is qualified or disqualified for office as a member of the transitional governing body.

(4) For the purposes of this Part, the temporary governing body as constituted under this regulation on and after the appointed day shall be referred to as the transitional governing body.

(5) In any case where the governing body of a new LEA maintained school are not constituted under the instrument of government before the appointed day, from the appointed day until midnight on the actual incorporation date, the transitional governing body shall be treated for the purposes of the Education Acts as if they were a temporary governing body constituted under section 44 of the

---

(8) See the [Education \(Government of New Schools on Transition to New Framework\) Regulations 1998 S.I. 1998 No. 3097](#).

1998 Act, except in so far as provision is made in relation to the transitional governing body and the constitution of a permanent governing body under an instrument of government under this Part.

### **Constitution of the governing body under the instrument of government**

**14.**—(1) Any reference in regulations 14(2) to 18 to the temporary governing body shall be construed as a reference to the transitional governing body at any time on or after the appointed day.

(2) For the purposes of this Part, the incorporation date means—

- (a) where the school’s opening date falls on or before 1st June 1999, 31st August 1999;
- (b) in any other case, such date (after 30th August 1999 but within three months after the school’s opening date) as the temporary governing body shall notify in writing to the local education authority.

(3) The temporary governing body shall secure that appointments or elections of governors required by the instrument of government for a new LEA maintained school take place before the incorporation date with effect from—

- (a) midnight on the incorporation date; or
- (b) midnight on the actual incorporation date if the temporary governing body notify such governors and the local education authority that (in default) the actual incorporation date falls after the incorporation date.

(4) The date on which the governing body of a new LEA maintained school are constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act, is, for the purposes of this Part, referred to as the actual incorporation date.

### **New governors**

**15.**—(1) In the case of the appointment of any governor (other than an additional co-opted governor) referred to in regulation 14(3), the clerk to the temporary governing body shall give written notice to the person who is to make the appointment unless that person has already notified him of an appointment to fill the vacancy(9).

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

(3) The head teacher will be a governor from midnight on the actual incorporation date unless (before the instrument of government is made) he has given written notice to the clerk to the temporary governing body that he chooses not to be a governor from that date.

(4) Paragraph (3) is without prejudice to the head teacher’s right after the actual incorporation date 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.

### **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 14(3).

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

---

(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.

(3) Any additional co-opted governor shall be appointed by members of the temporary governing body who were not themselves appointed as temporary co-opted governors under the 1996 Act.

(4) Any parent governor shall be either—

(a) elected (after the school's opening date) by parents of registered pupils at the new LEA maintained school and himself such a parent at the time when he is elected; or

(b) appointed as a parent governor (after the school's opening date) by the temporary governing body in the circumstances and subject to the provisions set out in Schedule 4.

(5) Any staff governor shall be elected (after the school's opening date) by persons employed (under a contract of employment or a contract for services) to work at the new LEA maintained school otherwise than as teachers, and shall himself be a person so employed at the time when he is elected.

(6) Any teacher governor shall be—

(a) a person elected (after the school's opening date) by teachers at the new LEA maintained school; and

(b) such a teacher at the time when he is elected.

(7) The quorum for a meeting of the temporary governing body to consider appointment of 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.

### **Information for successors**

18.—(1) Immediately before the actual incorporation date, the temporary governing body shall prepare, for the purpose of assisting the governing body who will succeed them, a brief report of the action which they have taken in the discharge of their functions relating to the new LEA maintained school.

(2) All minutes and papers of a temporary governing body relating to the new LEA maintained school, including the report prepared under paragraph (1), shall be made available to their successors.

### **Elections**

19.—(1) This regulation applies in relation to the election of governors referred to in regulation 14(3).

(2) Subject to paragraph (4), in this regulation, "appropriate authority" means—

(a) in relation to a new LEA maintained school which will be or is a community, community special or voluntary controlled school, the local education authority, and,

(b) in relation to a new LEA maintained school which will be or is a voluntary aided school, the temporary governing body before the appointed day and the transitional governing body on and after that day.

(3) Where a local education authority are 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 (5).

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

(5) 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.

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

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

- (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.

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

(9) The arrangements made under paragraph (6) 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.

(10) 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.

(11) Where a local education authority are the appropriate authority, that authority shall exercise their functions under this regulation in a manner calculated to enable the temporary governing body or transitional governing body, as the case may be, to fulfil their respective duties under regulation 14(3).

### **Tenure of office**

**20.—**(1) Any governor required by the instrument of government for a new LEA maintained school other than—

- (a) the head teacher;
- (b) a co-opted governor (not including an additional co-opted governor);
- (c) an ex officio foundation governor; or
- (d) a substitute governor;

shall hold office for a term of four years.

(2) Any co-opted governor required by the instrument of government for a new LEA maintained school (other than an additional co-opted governor) shall hold office for the term of one year.

(3) 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 11, and “the original governor” means the ex officio foundation governor in whose place the substitute governor is appointed to act.

(4) 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.

(5) 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 these regulations, for continuing to hold office.

### **Qualifications and disqualifications**

**21.** 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 new LEA maintained school required by an instrument of government.

### **Property, rights and liabilities**

**22.** On the transfer date—

- (a) all land and other property which, immediately before the transfer date, was property of the temporary or transitional governing body (as the case may be) used or held for the purposes of the new LEA maintained school, and
- (b) all rights and liabilities of the temporary or transitional governing body (as the case may be) subsisting immediately before that date which were acquired or incurred for those purposes,

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

### **Rights and liabilities under contract of employment**

**23.** Without prejudice to the generality of regulation 22, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract shall have effect from the transfer date as if originally made between the employee and the incorporated governing body, and
- (b) without prejudice to sub-paragraph (a) above, anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the incorporated governing body,

but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by that regulation.

### **Definitions for regulations 22 and 23**

**24.** In regulations 22 and 23 “transfer date” in relation to a school means the appointed day or the day after the actual incorporation date, if different.

### **Registered land and construction of agreements**

**25.—(1)** Where a transfer under regulation 22 relates to registered land, it shall be the duty of the transitional governing body—

- (a) to execute any such instrument under the Land Registration Acts 1925 to 1997<sup>(10)</sup>,
- (b) to deliver any such certificates under those Acts; and
- (c) to do such other things under those Acts,

as they would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Paragraphs 6 to 8 of Schedule 10 to the Education Reform Act 1988<sup>(11)</sup> (construction of agreements) shall apply in relation to transfers effected by regulation 22 as they apply in relation to transfers to which that Schedule applies.

## **PART III**

### **NEW GRANT-MAINTAINED SCHOOLS**

#### **Making of the instrument of government**

**26.—(1)** A local education authority shall secure that, before the appointed day, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act<sup>(12)</sup> for each new GM school.

(2) The instrument of government shall take effect—

- (a) from the date of making for the purpose of reconstituting the governing body, but shall not affect the constitution of the governing body which is conducting the school pending reconstitution under the instrument of government; and
- (b) from the appointed day for all other purposes.

(3) The GM 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.

#### **Modifications to the 1998 Act to enable the instrument of government to be made before the appointed day**

**27.—(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 new GM school to be made before 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 shall be treated as references to the area which it appears to the local education authority will be served by the new GM school when it opens.

---

<sup>(10)</sup> 1925 c. 21, 1936 c. 26, 1966 c. 39, 1971 c. 54, 1986 c. 26, 1988 c. 3 and 1997 c. 2.

<sup>(11)</sup> 1988 c. 40.

<sup>(12)</sup> As modified by regulation 27.

(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 GM governing body so determine”.

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

(a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with 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 is a grant-maintained school which does not open before 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 under 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 but shall not affect the constitution of the governing body conducting the school pending reconstitution under the instrument of government; and

(d) shall take effect from the appointed day for all other purposes.”; and

(c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a school referred to in paragraph (2A), the school shall be treated as having as registered pupils the number of pupils for which the school is established referred to in the proposals under section 211 or 212 of the Education Act 1996, as the case may be.”.

(5) References in paragraph 3 of Schedule 12 to the 1998 Act to—

(a) “the governing body” and “foundation governors” shall be treated as references to the GM governing body and members of the GM governing body who are foundation governors within the meaning of the 1996 Act (as the case may be); and

(b) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school will belong when it is a maintained school.

### **Additional co-opted governors and substitutes for ex officio foundation governors**

**28.** Regulations 10 and 11 and Schedule 1 shall apply.

### **Instrument of government**

**29.**—(1) 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 new GM school will belong on the appointed day<sup>(13)</sup>.

---

(13) See Part IV of the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, S.I. [1998/1969](#).

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.

(3) The GM governing body, or the GM transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

### **The GM transitional governing body**

**30.**—(1) Where a new GM school becomes a maintained school on the appointed day, the governing body of the school—

- (a) shall continue in existence as a body corporate; and
- (b) shall so continue as if incorporated under section 36(1) of the 1998 Act,

but as from that day the governing body shall (pending reconstitution under the instrument of government) continue as constituted immediately before that day, subject to this regulation.

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

- (a) the provisions of the 1996 Act relating to the composition of GM governing bodies, disqualification for office of members of such governing bodies and instruments of government for grant-maintained schools; and
- (b) any regulations and instruments of government in force under those provisions immediately before the appointed day.

(3) The relevant provisions shall have effect for the purpose of determining the composition of the GM transitional governing body and the circumstances in which a person is disqualified for office as a member of the GM 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 under Schedule 2 to the 1998 Act (taking account of whether the school is a primary or secondary school and the number of pupils for which the school is established referred to in the proposals under section 211 or 212 of the 1996 Act);
- (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) Members of the GM transitional governing body shall continue in office pending reconstitution of the governing body under the instrument of government, even if the term of office for which they were originally appointed has expired.

(6) For the purposes of these Regulations the governing body as constituted under this regulation shall be referred to as the GM transitional governing body.

### **Reconstitution of new GM school governing body**

**31.**—(1) Any reference in regulations 31(2) to 37 to the GM transitional governing body shall at any time before the appointed day be construed as a reference to the GM governing body.

(2) The GM transitional governing body shall secure that they are reconstituted under the instrument of government at midnight, on such date within 3 months after the school’s opening date, as the GM transitional governing body shall notify in writing to the local education authority (“the reconstitution date”).



### **Governors ceasing to hold office**

**32.**—(1) Any member of a GM transitional governing body who will not continue in office by virtue of regulation 33 from midnight on the reconstitution date 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 midnight on the reconstitution date.

### **Governors continuing in office**

**33.**—(1) Paragraph (2) applies to any member of a GM transitional governing body who on the reconstitution date is—

- (a) a governor who was when appointed a foundation governor (within the meaning of the 1996 Act), other than an ex officio foundation governor; or
- (b) a governor appointed by the local education authority.

(2) Subject to paragraphs (3) and (7), a governor to whom this paragraph applies shall continue from midnight on the reconstitution date 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 34, 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.

- (a) (4) (a) A member of a GM transitional governing body holding a foundation governorship ex officio shall continue from midnight on the reconstitution date 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 the reconstitution date.

(5) A head teacher shall continue as a governor from midnight on the reconstitution date unless (before the instrument of government is made) he has given written notice to the clerk to the GM governing body to the effect that he chooses not to be a governor from that date.

(6) Paragraph (5) is without prejudice to the head teacher's right after the reconstitution date 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.

(7) No member of a GM transitional governing body shall continue in office under this regulation if the term for which he was originally appointed has expired.

(8) This regulation is subject to regulation 34 (surplus governors) and paragraphs 1 to 5, 8 and 10 of Schedule 6 (disqualifications).

### **Removal of surplus governors**

**34.**—(1) This regulation applies where a new GM school has more governors of any of the categories referred to in paragraph (1)(a) or (b) of regulation 33 than are required as governors of the corresponding category by the instrument of government.

(2) Any person who would by virtue of any provision made by or under the 1996 Act have or have had power to remove any such governor shall have power to remove him for the purpose of eliminating the excess referred to in paragraph (1).

(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 GM transitional governing body.

(4) Where the excess referred to in paragraph (1) 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 reconstitution date) such number of governors of that category as is required to eliminate the excess shall cease to hold office at midnight on the reconstitution date.

(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 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.

(b) Where the governors in question are of equal seniority, the governors who are to cease to hold office shall be determined before the reconstitution date 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 in accordance with this Part.

### **New governors**

**35.**—(1) The GM transitional governing body shall secure that appointments or elections of governors required by the instrument of government take place before the reconstitution date with effect from midnight on that day.

(2) In the case of any appointment referred to in paragraph (1) other than the appointment of additional co-opted governors, the clerk to the GM transitional 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<sup>(14)</sup>.

(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 GM transitional governing body, specifying the name and usual place of residence of the person appointed.

### **Appointment or election of new governors**

**36.**—(1) The following paragraphs apply in relation to the appointment or election of governors referred to in regulation 35(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 33(2) and (4).

(3) Any co-opted governor (other than an additional co-opted governor) shall be appointed by members of the GM transitional governing body, in accordance with Schedule 3.

(4) Any additional co-opted governor shall be appointed by members of the GM transitional governing body.

(5) Any parent governor shall be either—

---

<sup>(14)</sup> 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.

- (a) elected (after the school's opening date) by parents of registered pupils at the new GM school and himself such a parent at the time at which he is elected; or
  - (b) appointed as a parent governor (after the school's opening date) by the GM transitional governing body in the circumstances and subject to the provisions set out in Schedule 4.
- (6) Any partnership governor shall be a person who (after the school's opening date) is nominated as a partnership governor, and appointed as such, in accordance with Schedule 5.
- (7) Any staff governor shall be elected (after the school's opening date) by persons employed (under a contract of employment or a contract for services) to work at the new GM school otherwise than as teachers, and shall be himself a person so employed at the time when he is elected.
- (8) Any teacher governor shall be—
- (a) a person elected (after the school's opening date) by teachers at the new GM school; and
  - (b) such a teacher at the time when he is elected.
- (9) The quorum for a meeting of the GM transitional 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**

**37.** 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.

### **Elections**

**38.** Regulation 19 shall also apply in relation to the election of governors referred to in regulation 35(1) but in regulation 19 for this purpose—

- (a) paragraph (1) shall be omitted;
- (b) there shall be substituted for paragraph (2)—
  - “(2) Subject to paragraph (4), in this regulation “appropriate authority” means—
  - (a) in relation to a new GM school which is a community or voluntary controlled school, the local education authority, and
  - (b) in relation to a new GM school which is a voluntary aided or foundation school, the GM transitional governing body.”;
- (c) there shall be substituted for paragraph (4)—
  - “(4) The local education authority shall be the appropriate authority in relation to a school within paragraph (2)(b), if the GM transitional governing body and the local education authority so agree.”; and
- (d) for paragraph (11) there shall be substituted:
  - “(11) Where a local education authority are the appropriate authority, that authority shall exercise their functions under this regulation in a manner calculated to enable the GM transitional governing body to fulfil their duty under regulation 35(1)”.

### **Tenure of office**

**39.** Regulation 20 shall also apply to the tenure of office of governors required at new GM schools by instruments of government or by regulation 30(4), but in regulation 20 for this purpose, for paragraphs (1) and (2), there is substituted—

“(1) A member of the GM transitional governing body who continues as a governor of the school from midnight on the reconstitution date (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.

(1A) Any other governor required by the instrument of government for a new GM school, or by regulation 30, other than—

- (a) the head teacher;
- (b) a co-opted governor (not including an additional co-opted governor);
- (c) an ex officio foundation governor; or
- (d) a substitute governor,

shall hold office for a term of four years.

(2) Any co-opted governor referred to in regulation 35(1) (other than an additional co-opted governor) shall hold office for the term of one year.”

### **Qualifications and disqualifications**

**40.** 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 new GM school required by an instrument of government.

## **PART IV**

### **GROUPED SCHOOLS**

#### **Transitional amendments to the 1996 Act**

**41.**—(1) No resolution made under section 89(1) of the 1996 Act shall take effect on or after 10th March 1999.

(2) Subject to this Part, any group established under section 89 of the 1996 Act for a specified period ending on or after 10th March 1999 shall continue after the end of that period.

(3) In relation to any time on or after 10th March 1999, section 89(4) of the 1996 Act shall have effect as if a group were treated for the purposes of Chapter IV of Part II of the 1996 Act as a school of the category which applied by virtue of section 89(4) of the 1996 Act on 9th March 1999, notwithstanding any subsequent changes to schools in the group<sup>(15)</sup>.

#### **Time limit for making the instrument of government**

**42.**—(1) A local education authority shall secure that, before the appointed day, an instrument of government has been made in accordance with Schedule 12 to the Act 1998<sup>(16)</sup> for each grouped school which will be maintained by them on the appointed day.

---

<sup>(15)</sup> The [School Standards and Framework Act 1998 \(Commencement No. 5 and Saving and Transitional Provisions\) Order 1999 \(1999 No. 120\(c.3\)\)](#) brings into force the repeal of sections 54(6)(c), 89(1) and (2), sections 90, 91, 92(1), (2) and (4), 94 and 95 of the 1996 Act from 10th March 1999.

<sup>(16)</sup> As modified by regulation 43.

(2) Paragraphs (1), (4) and (5) of this regulation and regulations 43 to 48 and 51 to 56 do not apply in relation to a grouped school if—

- (a) proposals to discontinue the school have been approved under section 169 or 340 of the 1996 Act or under paragraph 3 or 8 of Schedule 6 to the 1998 Act, or
- (b) the local education authority have determined under section 170 of the 1996 Act or under paragraph 4 or 9 of the 1998 Act to implement the proposals to discontinue the school,

and in either case the date on which the proposals, as approved or determined, are to be implemented is on or before 1st January 2000.

(3) In paragraph (2) references to proposals are to proposals with any modifications made under section 169 or 340(4) of the 1996 Act or paragraph 3 or 8 of Schedule 6 to the 1998 Act (but disregarding any modifications made under section 171 or 340(5) of the 1996 Act or paragraph 5 or 10 of Schedule 6 to the 1998 Act).

- (a) (4) (a) The instrument of government shall take effect from the date of making for the purpose of constituting the governing body but shall not affect the constitution or name of the governing body conducting the school pending constitution of the new governing body under the instrument of government.
- (b) For all other purposes, the instrument of government shall take effect—
  - (i) if made before the appointed day, from the appointed day; or
  - (ii) if made (in default of the duty in paragraph (1)) on or after the appointed day, from the date of making.

(5) The grouped 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.

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

**43.**—(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 grouped school to be made before the appointed day.

(2) Paragraphs (2) and (3) of regulation 8 shall apply with the substitution of “grouped school” for “new LEA maintained school”, in each place where those words occur, and the omission of the words “or proposed school”.

(3) Paragraph (4) of regulation 8 shall apply with the substitution of “grouped governing body” for “temporary governing body”.

(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 grouped under section 89 or 280 of the Education Act 1996, 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 under 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 constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the school pending constitution of the new governing body 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—

- (a) “the governing body” shall be treated as references to the grouped governing body;
- (b) “foundation governors” shall be treated as references to members of the grouped governing body who are foundation governors; and
- (c) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school will belong when it is a maintained school.

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

**44.**—(1) Schedules 9 and 12 to the 1998 Act shall apply with the following modifications to enable the instrument of government for a grouped 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 grouped 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 date”; and
- (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 school grouped under section 89 or 280 of the Education Act 1996 immediately before the appointed day, such instrument of government shall take effect from the date of making for all purposes (including for the purpose of constituting the governing body under the instrument of government) except that it shall not affect the constitution or name of the governing body conducting the school pending constitution of the new governing body under the instrument of government.”.

(4) References in paragraph 3 of Schedule 12 to the 1998 Act to—

- (a) “the governing body”, shall be treated as references to the grouped transitional governing body; and
- (b) “foundation governors” shall be treated as references to members of the grouped transitional governing body who were when appointed foundation governors within the meaning of the 1996 Act.

#### **Additional co-opted governors and substitutes for ex officio foundation governors**

**45.** Regulations 10 and 11 and Schedule 1 shall apply.

### **Instrument of government**

**46.**—(1) 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 grouped school will belong or belongs.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.

(3) The grouped governing body or the grouped transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

### **Constitution of the governing body under the instrument of government**

**47.**—(1) Any reference in regulation 47(2) to 48 to the grouped governing body shall be construed as a reference to the grouped transitional governing body at any time on or after the appointed day.

(2) In relation to each grouped school, the grouped governing body shall notify in writing to the local education authority a date after 30th August 1999, but before 1st January 2000, which shall be the incorporation date.

(3) The grouped governing body shall secure that appointments or elections of governors required by the instrument of government for a grouped school take place before the incorporation date with effect from—

- (a) midnight on the incorporation date; or
- (b) midnight on the actual incorporation date if the grouped governing body notify such governors and the local education authority that (in default) the actual incorporation date falls after the incorporation date.

(4) The date on which the governing body of a grouped school are constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act, is referred to in this Part as the actual incorporation date.

### **New governors**

**48.**—(1) Regulations 15 to 18 shall apply in relation to each grouped school as if—

- (a) “regulation 47(3)” were substituted for “regulation 14(3)”;
- (b) “grouped governing body” were substituted for “temporary governing body”;
- (c) “grouped school” were substituted for “new LEA maintained school”;
- (d) “co-opted governors” were substituted for “temporary co-opted governors”; and
- (e) “(after the school’s opening date)” were omitted;

wherever those expressions occur.

(2) Without prejudice to paragraph (1), regulation 16 shall apply as if—

- (a) the following paragraph were inserted after paragraph (4)—

“(4A) Any partnership governor shall be a person nominated as a partnership governor, and appointed as such, in accordance with Schedule 5.”;
- (b) in paragraph (7), “partnership governors,” were inserted before “parent governors”.

### **The grouped transitional governing body**

**49.**—(1) In any case where the governing body of a maintained school which is a grouped school are not constituted under the instrument of government before the appointed day, the grouped governing body shall continue from that day as constituted immediately before that day, subject to and in accordance with this regulation and regulation 57(17).

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

- (a) the provisions in of the 1996 Act relating to the composition and name of grouped governing bodies, disqualification for office of members of such governing bodies and instruments of government for grouped schools;
- (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 and name of the grouped transitional governing body and the circumstances in which a person is disqualified for office as a member of the grouped transitional governing body, but subject to the modifications in paragraph (4).

(4) For this purpose the relevant provisions shall have effect as set out in this paragraph.

- (a) The relevant provisions shall have effect as if any such instrument of government were required to provide and did provide for the local education authority to appoint the number of governors specified in sub-paragraph (a)(i) or (ii) below (as the case may be) if that is more than the number of governors appointed by the local education authority required by such instrument of government.

- (i) Where the governing body of only one school in the group is not constituted under the instrument of government before the appointed day, the number specified is 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 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).

- (ii) Where the governing body of more than one school in the group is not constituted under the instrument of government before the appointed day, the number specified is the number of governors that would be required to be appointed by the local education authority by sub-paragraph (i) above if the school requiring the smallest number of LEA governors were the only school in the group for which the governing body was not constituted under the instrument of government before the appointed day.

- (b) The relevant provisions shall have effect as if, subject to any appointments required by sub-paragraph (a), they provided that no new appointments shall be made of governors under those provisions.

(5) Members of the grouped transitional governing body shall continue in office, even if the term of office for which they were originally appointed has expired.

(6) For the purposes of this Part the grouped governing body as constituted under this regulation from the appointed day shall be referred to as the grouped transitional governing body.

(7) The grouped transitional governing body—

- (a) shall continue in existence as a body corporate; and

---

(17) If new governing bodies for all the schools in the group are constituted under instruments of government before the appointed day, the grouped governing body continues until dissolved under regulation 50.



- (b) shall so continue in existence as if, in relation to each grouped school, from the appointed day until the constitution of the governing body under the instrument of government or the discontinuance of the school if earlier, it were the governing body incorporated under section 36(1) of the 1998 Act, except that—
  - (i) subject to these Regulations, provisions made by or under the 1998 Act relating to instruments of government, composition of governing bodies and disqualification of governors, and paragraphs 2(1) and 4 of Schedule 10 to the 1998 Act, shall not apply to the grouped transitional governing body; and
  - (ii) for the purposes of their meetings and proceedings, the grouped transitional governing body may treat one or more grouped schools (for which no governing body has been constituted under an instrument of government) as a single school.

### **Dissolution of grouped governing body or grouped transitional governing body**

**50.**—(1) The grouped governing body shall notify the Secretary of State and the local education authority when—

- (a) they have fulfilled all their obligations under this Part;
  - (b) any transfers required by regulations 54 and 55 have been completed; and
  - (c) they no longer conduct any, grouped school, employ any staff at such a school, have any legal proceedings or applications pending by or against them, or have any property, rights or liabilities.
- (2) The grouped governing body are dissolved by virtue of this regulation—
- (a) on the date 3 months after the notification referred to in paragraph (1) is received by the Secretary of State; or
  - (b) if, prior to the date referred to in sub-paragraph (a), the Secretary of State has informed the grouped governing body that he is not satisfied as to any of the matters set out in the notification, such later date as may be specified in a written notice from the Secretary of State to the grouped governing body.

(3) References in this regulation to the grouped governing body include a grouped transitional governing body.

### **Elections**

**51.** Regulation 19 applies in relation to the election of governors referred to in regulation 47(3) but in that regulation for this purpose—

- (a) paragraph (1) shall be omitted;
- (b) there shall be substituted for paragraph (2);
  - “(2) Subject to paragraph (4), in this regulation, “appropriate authority” means
    - (a) in relation to a grouped school which will be or is from the appointed day a community, community special or voluntary controlled school, the local education authority; and
    - (b) in relation to a grouped school which will be or is from the appointed day a voluntary aided, foundation or foundation special school, the grouped governing body before the appointed day and the grouped transitional governing body on and after that day.”;
- (c) In paragraph (4), for “the temporary governing body or the transitional governing body” there shall be substituted “the grouped governing body or the grouped transitional governing body”.

(d) there shall be substituted for paragraph (11)—

“(11) Where a local education authority are the appropriate authority that authority shall exercise their functions under this regulation in a manner calculated to enable the grouped governing body or the grouped transitional governing body, as the case may be, to fulfil their respective duties under regulation 47(3).”

### **Tenure of office**

52. Regulation 20 shall apply, except that for each reference to a new LEA maintained school there shall be substituted a reference to a grouped school.

### **Qualifications and disqualifications**

53. 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 grouped school required by an instrument of government or treated as if provided for by such an instrument of government by virtue of regulation 57.

### **Transfer of property**

54.—(1) Subject to paragraphs (2), (4) and (5), in the case of each grouped school, on the transfer date—

- (a) all land or other property which, immediately before the transfer date, was property of the grouped governing body held or used for the purposes of the school; and
- (b) all rights and liabilities of the grouped governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this regulation, vest in either—

- (i) the governing body of the school constituted under the instrument of government, in the case of a grouped school which on or after the appointed day becomes a foundation or voluntary aided school, or
- (ii) the local education authority, in the case of a grouped school which on or after the appointed day becomes a community, community special or voluntary controlled school.

(2) Subject to paragraph (5), on the first transfer date, any property, rights and liabilities of a grouped governing body held or used or subsisting for the purposes of more than one school in the group shall, where the nature of the property, right or liability permits, be divided or apportioned between the schools, in such proportions as may be appropriate.

(3) Where any estate or interest in land falls to be divided in accordance with paragraph (2)—

- (a) any rent payable under a lease in respect of that estate or interest; and
- (b) any rent charged on that estate or interest;

shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(4) Subject to paragraph (5), any such property, right or liability as is mentioned in paragraph (2), the nature of which does not permit its division or apportionment as so mentioned, shall be transferred either to the governing body of any one or other of the schools in the group which on or after the appointed day becomes a foundation or voluntary aided school or to the local education authority in the case of any school in the group which on or after the appointed day becomes a community, community special or voluntary controlled school, according to—

- (a) in the case of an estate or interest in land, whether on the first transfer date one or other of the schools appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
- (b) in the case of any other property or any right or liability, which of them appears on the first transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent;

subject (in either case) to such arrangements for the protection of the other school or schools concerned as may be appropriate.

- (5) Paragraphs (1), (2) and (4) shall not apply to—
  - (a) rights and liabilities under any contract of employment; or
  - (b) any land or other property vested in the grouped governing body as trustees.
- (a) (6) (a) Section 198(3) of and paragraphs 2 to 10 of Schedule 10 to the Education Reform Act 1988 (which make further provision in relation to transfers of property, rights and liabilities) shall apply to transfers under this regulation with the following modifications.
  - (b) Paragraph 2(1) of Schedule 10 shall apply subject to—
    - (i) the reference to “paragraph 1(4) above” shall be treated as a reference to “paragraph (4) of regulation 54 of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999”;
    - (ii) in sub-paragraph 1(a) the substitution of “other school or schools concerned” for “transferor”; and
    - (iii) in sub-paragraph 1(b) the substitution of “other school or schools concerned” for “transferor” in the last place where that word occurs.
  - (c) References in section 198(3) and in the said paragraphs of Schedule 10, as they apply for the purposes of this regulation, to the transfer date are to the transfer date as it is defined for the purposes of this regulation.
- (a) (7) (a) In this regulation, “first transfer date” means the transfer date of the first school in the group to have a governing body constituted under the instrument of government and “transfer date”, in relation to a grouped school, means the appointed day or the day after the actual incorporation date, if different.
  - (b) References in this regulation to the grouped governing body include a grouped transitional governing body.
  - (c) References in this regulation to a school or schools in the group shall include a school or schools which were in the group immediately before the first transfer date.

### **Transfer of staff**

**55.**—(1) Subject to paragraph (2), this regulation shall apply to any person who immediately before the transfer date is employed by the grouped governing body of—

- (a) a grouped school which is an aided school, (or which, immediately prior to the appointed day, was an aided school); or
- (b) a grouped school which is a grant-maintained school (or which, immediately prior to the appointed day, was a grant-maintained school).

(2) This regulation shall not apply to any person whose contract of employment terminates on the day immediately preceding the transfer date.

(3) A person who before the transfer date in relation to a grouped school within paragraph (1)(a) or (b) has been appointed by the grouped governing body of that school to work at the school as from the transfer date shall be treated for the purposes of this regulation as if he had been employed by the grouped governing body immediately before that day to do such work at the school as he would have been required to do on or after that day under his contract of employment with the grouped governing body.

(4) The contract of employment between a person to whom this regulation applies and his former employer shall have effect from the transfer date as if originally made between him and his new employer.

(5) Without prejudice to paragraph (4)—

(a) all the former employer's rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this regulation be transferred to the new employer on the transfer date; and

(b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the new employer.

(6) Paragraphs (4) and (5) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this regulation.

(7) In this regulation—

“aided school” has the meaning in the 1996 Act;

“first transfer date” means the transfer date of the first school in the group to have a governing body constituted under the instrument of government;

“the former employer” means the grouped governing body;

“the new employer”—

(a) in the case of a person who, immediately before the transfer date in relation to a school within paragraph (1)(a) above, was employed by the grouped governing body to work solely at that school, means the governing body of that school constituted under the instrument of government;

(b) in the case of a person who, immediately before the first transfer date in relation to a school within paragraph 1(a) above, was employed by the grouped governing body to work at more than one school in the group, shall be determined by the grouped governing body before the first transfer date and shall be either the governing body of one of the grouped schools constituted under an instrument of, subject to paragraph (9), government or the local education authority, provided that the authority has given its prior consent to becoming the employer;

(c) in the case of a person who, immediately before the transfer date in relation to a school within paragraph (1)(b) above, was employed by the grouped governing body to work solely at that school means;

(i) where on the appointed day the school becomes a foundation or voluntary aided school, the governing body of that school constituted under the instrument of government; and

(ii) where on the appointed day the school becomes a community or voluntary controlled school, the local education authority; and

(d) in the case of a person who, immediately before the first transfer date in relation to a school within paragraph (1)(b) above, was employed by the grouped governing body to

work at more than one school in the group, shall be determined by the grouped governing body before the first transfer date and shall be either;

- (i) the governing body constituted under an instrument of government of one of the grouped schools, which on the appointed day becomes a foundation or voluntary aided school, or
- (ii) the local education authority, in the case of a grouped school which on the appointed day becomes a voluntary controlled or community school or (provided that the authority has given its prior consent to becoming the employer and subject to paragraph (9)) in the case of a grouped school which on the appointed day becomes a foundation or voluntary aided school; and

“transfer date” in relation to a grouped school means the appointed day or the day after the actual incorporation date, if different.

(8) References in this regulation to the grouped governing body include a grouped transitional governing body.

(9) A local education authority may only become the new employer of a person employed to work at a foundation or voluntary aided school under this regulation where that person is employed to work in a non-teaching post.

#### **Modification of section 73 of the 1998 Act**

**56.** Section 73 of the 1998 Act shall not apply to the transfers of staff from a grouped governing body.

## **PART V**

### **ADDITIONAL GOVERNORS AT SCHOOLS CAUSING CONCERN**

#### **Additional governors continuing in office**

**57.**—(1) This regulation applies to any person who is at midnight on 31st August 1999—

- (a) an additional governor, or an additional foundation governor, appointed under section 27 of the School Inspections Act 1996(18);
- (b) an additional governor, or an additional foundation governor, appointed under section 16 of the 1998 Act; or
- (c) an additional governor appointed by the Secretary of State under section 18 of the 1998 Act,

of a current or grouped school to which this Part applies.

(2) In this regulation, “current school” means a county, voluntary or maintained special school, other than a school falling within regulation 1(2) or (4).

(3) Any governor to whom this regulation applies shall continue in office from the appointed day, subject to any provisions applying in relation to disqualification or term of office.

(4) The instrument of government for the school shall have effect as if (despite anything in Part II of Schedule 9 to the 1998 Act) it provided for any governor who continues in office by virtue of this regulation to be a member of the governing body.

(5) Where—

- (a) in the case of a current school, the instrument of government is not made before the appointed day; or
- (b) in the case of a grouped school, the governing body are not constituted under the instrument of government before the appointed day;

the transitional governing body (within the meaning in the First Transitional Regulations), or the grouped transitional governing body, as the case may be, shall include any governor to whom this regulation applies.

(6) A governor referred to in paragraph (5) shall continue in office until the governing body are constituted under the instrument of government, even if the term for which he was originally appointed has expired, but shall continue as a member of the governing body constituted under the instrument of government if the term for which he was originally appointed has expired.

(7) Subject to paragraph (6), any governor to whom this regulation applies who was appointed to hold office for a fixed term shall hold office for the remainder of the term for which he was appointed, but for no longer than 4 years from the appointed day.

(8) Regulation 23 of the First Transitional Regulations shall be amended by the addition of the following words at the end:

“or treated as if provided for by such an instrument of government by virtue of regulation 57(4) of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999.”.

#### **Additional governors at new or grouped GM schools ceasing to hold office**

**58.**—(1) This regulation applies to any member of a GM governing body or a grouped governing body, who is at midnight on 31st August 1999, at a school to which this Part applies, an additional governor or an additional first, foundation or core governor appointed under any provision in an instrument of government (within the terms of the 1996 Act) required by:

- (a) section 230 of the 1996 Act; or
- (b) section 287 of the 1996 Act.

(2) Any governor to whom this regulation applies shall cease to hold office at midnight on 31st August 1999.

(3) Paragraph (2) shall not disqualify a person for election or appointment as a governor of the school in question from midnight on 31st August 1999.

#### **Additional governors at other GM schools ceasing to hold office**

**59.** Regulation 12(3) of the First Transitional Regulations shall be amended by the addition of “or” before sub-paragraph (b) and the omission of “or” before sub-paragraph (c) and of sub-paragraph (c).

## PART VI

#### **Governors as trustees**

**60.** Where, on the appointed day—

- (a) a grant-maintained school becomes a voluntary or foundation school; or
- (b) a grant-maintained special school becomes a foundation special school,

any land or other property used or held for the purposes of the school and which vested in the first governors of the grant-maintained school or the grant-maintained special school (as the case may be) as trustees by virtue of section 201(4) of the 1996 Act shall on that day be transferred to, and by virtue of this regulation vest in, the governing body of the school on the trusts applicable immediately before that date under any trust deed regulating the use of that land or other property for the purposes of the school.

## PART VII

### Miscellaneous Amendments to the First Transitional Regulations

- 61.**—(1) The First Transitional Regulations(**19**) shall be amended as follows—
- (2) In regulation 2(1), after the definition of “current school”, there shall be inserted the following definition—
- ““employee of the local education authority” means a person employed by the local education authority in connection with their functions as a local education authority;”.
- (3) In regulation 2(1), after the definition of “instrument of government”, there shall be inserted the following definition—
- ““representative governor” means a representative governor required by virtue of paragraph 10 of Schedule 9 to the 1998 Act;”.
- (4) In regulation 6, there shall be inserted—
- (a) after paragraph (2) the following paragraph—
- “(2A) In relation to a school which will be a community special school not established in a hospital, paragraph 10 of Schedule 9 to the 1998 Act shall apply as if there were substituted for sub-paragraph (6)(a) the following—
- “(a) if a voluntary organisation is designated by the local education authority, in relation to the school which will be a community special school, as the appropriate voluntary organisation concerned with matters in respect of which the community special school will be specially organised, a representative governor shall be appointed by that organisation;” or;”;
- (b) after paragraph (5) the following paragraph—
- “(5A) References in paragraph 3 of Schedule 12 to the 1998 Act to the “category of school to which the school belongs” shall be treated as references to the category of school to which the school will belong when it is a maintained school.”.
- (5) In regulation 7(3)(a), there shall be substituted for “dates” the word “date”.
- (6) In regulation 10 there shall be added the following paragraphs—
- “(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.
- (3) The current governing body or the transitional governing body, as the case may be, shall not delegate any decision relating to the contents or preparation of the instrument of government, or the appointment of governors required by the instrument of government.”.
- (7) In regulation 12(2), there shall be substituted for “the appointed day”, the words “midnight on 31st August 1999”.

- (8) For regulation 14(5)(a), there shall be substituted—
- “(a) The governors who are to cease to hold office under paragraph (4) 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.”.
- (9) In regulation 19, there shall be substituted in paragraph (1) for “(4)”, “(4A)” and there shall be inserted after paragraph (4) the following paragraph—
- “(4A) Members of the transitional governing body shall continue in office pending reconstitution of the governing body under the instrument of government, even if the term of office for which they were originally appointed has expired.”.
- (10) In regulation 20, there shall be inserted after paragraph (5) the following paragraph—
- “(5A) In regulation 13, there shall be inserted after paragraph (9) the following paragraph—
- “(9A) No member of a transitional governing body shall continue in office under this regulation if the term for which he was originally appointed has expired.”.
- (11) In regulation 20(6), after “power”, there shall be inserted “in the first place where that word occurs,”.
- (12) In paragraph 1(b) of Schedule 1, there shall be inserted before “financial”, the word “substantial” and after “benefits in kind”, the words “other than the provision of services”.
- (13) In paragraph 1(b) of Schedule 5, the words “where appointments are made” shall be omitted in both places where those words occur.
- (14) In paragraph 3(4) and (6) of Schedule 6, for the word “paragraph”, in each place where that word occurs, there shall be substituted the word “sub-paragraph”.

11th February, 1999

*Estelle Morris*  
Minister of State,  
Department for Education and Employment

16th February, 1999

*Peter Hain*  
Parliamentary Under Secretary of State, Welsh  
Office