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EDUCATION, ENGLAND

The School Companies Regulations 2002

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SCHEDULE 1 Regulation 5

1. Individuals who cannot be members of a school company

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 12 and 210(7) of the Education Act 2002 (a) hereby makes the following Regulations:

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the School Companies Regulations 2002 and shall come into force on 20th January 2003 (b).

Interpretation

- 2.—(1) In these Regulations –

“the 2002 Act” means the Education Act 2002;

“the 1998 Act” means the School Standards and Framework Act 1998 (c);

“the constitution of a school company” means the company’s memorandum and articles of association;

“executive director” means a director who provides services to the company for remuneration or other benefits whether or not under a contract of service;

“a further education institution” means—

(a) 2002 c.32.

(b) See section 212 for the definition of “regulation”; by virtue of that definition these Regulations made by the Secretary of State only apply in relation to England.

(c) 1998 c.31.

- (a) an institution which has been designated by order of the Secretary of State under section 28 of the Further and Higher Education Act 1992 **(a)**; or
- (b) an institution conducted by a further education corporation as defined by section 17(1) of the Further and Higher Education Act 1992;

“a higher education institution” means—

- (a) an institution conducted by a higher education corporation as defined by section 90(1) of the Further and Higher Education Act 1992;
- (b) a university; or
- (c) an institution which has been designated by order of the Secretary of State as eligible to receive funding from a higher education council under section 129 of the Education Reform Act 1988 **(b)**;

“non-executive director” means a director who does not provide services to the company for remuneration or other benefits;

“a relevant local education authority” means a local education authority which maintains any schools whose governing bodies are members of the school company;

“a school company” means a company to which these Regulations apply in accordance with Regulation 4;

“supervising authority” means the local education authority designated in accordance with Part 4 of these Regulations to supervise a school company.

- (2) For the purposes of these regulations a school is “subject to special measures” if -
 - (a) a report of an inspection of the school has been made under either Part 1 of the School Inspections Act 1996 **(c)** or section 65 or 83 of the Learning and Skills Act 2000**(d)** in which the person making it stated that in his opinion special measures were required to be taken in relation to the school; and
 - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion; and
 - (c) the report has not been superseded by any subsequent report in which the person making it stated that in his view special measures were not required to be taken relation to the school.
- (3) For the purposes of these regulations a school “has serious weaknesses” if -
 - (a) a report of an inspection of the school has been made under Part 1 of the School Inspections Act 1996 in which the person making it stated that in his opinion the school had serious weaknesses; and
 - (b) that report has not been superseded by a subsequent report stating that in the opinion of the person writing the report the school either, no longer has serious weaknesses, or stating that special measures are required to be taken in relation to the school.

Definition of “an agreement under the private finance initiative”

3.—(1) For the purposes of these Regulations “an agreement under the private finance initiative” means an agreement to which paragraph (3) or (4) of this regulation applies.

(2) In this regulation-

“asset” means-

- (a) any tangible asset, including any land, building or equipment; or
- (b) any computer software;

(a) 1992 c.13.
(b) 1988 c.40.
(c) 1996 c.57.
(d) 2000 c.21.

“works” means the construction, enhancement, replacement or installation of an asset.

(3) This paragraph applies to an agreement where –

- (a) consideration is received by the governing body of a maintained school under the agreement and that consideration includes –
 - (i) the provision or making available of an asset or the carrying out of works for the purposes of, or in connection with, the discharge of a function of the governing body; and
 - (ii) the provision of services for the purposes of, or in connection with, the discharge of the same function;
- (b) the governing body do not give to any other person any indemnity or guarantee in respect of any liabilities of the person with whom they enter into the transaction (whether those liabilities are incurred in respect of the transaction or otherwise);
- (c) the consideration given by the governing body under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
- (d) the fees are determined in accordance with factors which in every case include-
 - (i) standards attained in the performance of the services; or
 - (ii) the extent, rate or intensity of use of the asset, or as the case may be of the asset which is constructed enhanced, replaced or installed under the transaction; and
- (e) the first instalment of fees falls to be paid after the services have started to be provided.

(4) This paragraph applies to an agreement where private finance initiative credits are given to a local authority in respect of that agreement.

Companies governed by these Regulations

4. These Regulations apply in relation to any company whose members include the governing body of a maintained school which has exercised its powers under section 11 of the 2002 Act to become a member of the company, except where -

- (a) the main purpose of the members in forming the company is to enter into or facilitate agreements under the private finance initiative; and
- (b) one of the company’s objects is to enter into or facilitate agreements under the private finance initiative (a).

PART 2

Restrictions on School Companies

Persons who may be admitted to membership of School Companies

5.—(1) The constitution of a school company must provide that the company must not admit to its membership any person who is not listed in paragraph (2) below.

(2) The following persons may be members of a school company–

- (a) the governing body of a maintained school;
- (b) a local authority in England;
- (c) the proprietor of an independent school or the governing body of an independent school (if the governing body has legal personality), which provides full-time education for five or more pupils of compulsory school age;

(a) Companies formed or joined by governing bodies of maintained schools under section 11 of the 2002 Act to which these Regulations do not apply will be governed by separate regulations which have not been made at the date of the making of these Regulations.

- (d) a company which has as a significant proportion of its business the provision of education or educational or ancillary services or goods;
- (e) the governing body of a further or higher education institution (within the meaning of section 90(1) of the Further and Higher Education Act 1992) if it has legal personality;
- (f) any individual who is not excluded by Schedule 1.

Restriction on entering into contracts in which a director of the company has an interest

6.—(1) If the constitution of a school company permits it to enter into contracts in which a director of the company has an interest, then the constitution shall provide that the company may only enter into such a contract if:-

- (a) the goods or services supplied to the company under the contract are required by the company; and
- (b) the nature and level of consideration is no more than is reasonable in relation to the value of the goods or services.

(2) For the purposes of paragraph (1), a director has an interest in a contract if the following conditions are met and one of the conditions in paragraph (3) is met:-

- (a) the contract is for the supply of goods or services in return for a payment or other material benefit; and
- (b) the contract is not for the supply of services within the scope of the ordinary duties of the director.

(3) The conditions in this paragraph are that:-

- (a) the director is a party to the contract;
- (b) a firm of which the director is a partner is party to the contract; or
- (c) a company or unincorporated association of which he is a member, is a party to the contract and where the company of which he is a member is limited by shares, he is a member holding more than 1% of the issued share capital of the company.

Procedure in meetings of the directors if a director has an interest in a matter to be discussed

7. The constitution of a school company must provide that whenever a director has an interest, whether pecuniary or non-pecuniary, in a matter to be discussed at a meeting of the directors or a committee, the director concerned must:-

- (a) declare an interest at the time that, or before, discussion begins on the matter;
- (b) withdraw from the meeting for that item;
- (c) not be counted in the quorum for that part of the meeting; and
- (d) withdraw during the vote and have no vote on the matter.

Directors of School Companies and their remuneration

8.—(1) The constitution of a school company must provide that at least 40% of the directors of the company at any one time shall be non-executive directors.

(2) The constitution of a school company must provide that:-

- (a) there shall be a remuneration committee;
- (b) the members of the remuneration committee shall all be non-executive directors;
- (c) the remuneration committee shall recommend to the directors of the company the terms of service and remuneration of the executive directors; and
- (d) the terms of service and remuneration of the executive directors shall be determined either by the directors as a whole on the recommendation of the remuneration committee, or by the remuneration committee alone.

Procedure for deciding remuneration and benefits of directors

9. The constitution of a school company must provide that no director is entitled to be present or to vote when his own remuneration or his own terms of service are being discussed. However, the constitution may allow the directors of the company to vote upon benefits, including the provision of pensions and insurance, which are provided equally for all directors or all executive directors of the company.

Application of any surplus or profits of a school company

10. The constitution of a school company must provide that:-
- (a) any surplus or profits generated by the company are to be applied to further the objects of the company and shall not be distributed among the members; or
 - (b) any surplus or profits generated by the company are to be distributed among the members according to proportions or procedures set out in the company's constitution; or
 - (c) any surplus or profits generated by the company may be applied to further the objects of the company or distributed among the members according to proportions or procedures set out in the company's constitution.

Permission required before a school company may borrow

11. The constitution of a school company must provide that the company shall not borrow any funds, whether secured or unsecured, without the permission of the company's supervising authority.

Restriction on school funding of school companies

12. Where a governing body of a maintained school, which is a member of a school company, is spending money as agent of its local education authority by virtue of section 49(5) of the 1998 Act, it must only make payments to that company in the following circumstances: –

- (a) as consideration for services or goods that the company has supplied or procured for the school; or
- (b) where such payment is necessary or expedient to enable the company to pursue its objects.

Circumstances where a governing body must withdraw from a school company

13. If a maintained school whose governing body is a member of a school company has its delegated budget suspended under section 17 of the 1998 Act then that school's governing body must either:-

- (a) reduce their involvement in the management of the company in accordance with regulation 32; or
- (b) resign as a member of the company.

Notice required if a member wishes to leave a company

14. The constitution of a school company must provide that a member of the company may resign that membership at his own discretion but only after he has given every member of the company and the company itself 12 weeks notice of his resignation.

PART 3

Seeking Consent to Become a Member of a School Company

Grounds on which a local education authority may refuse permission to a school governing body to become a member of a school company

15. Where the governing body of a maintained school seek the consent of the local education authority to form or become a member of a company in exercise of their powers under section 11 of the 2002 Act, the local education authority must give that consent unless –

- (a) the school is subject to special measures;
- (b) the school has serious weaknesses;
- (c) the local education authority considers that the school is likely to become subject to special measures or be assessed as having serious weaknesses within the next year;
- (d) the school has a deficit budget;
- (e) the governing body of the school has, within the last 3 years, been a member of a school company which became insolvent at a time when the governing body was a member; or
- (f) the governing body of the school has been a member of a company which failed to act in accordance with these regulations within the last 3 years.

Duty to provide written reasons for refusal

16. Where the local education authority does not consent to a governing body becoming a member of a school company, it must provide written reasons for its refusal.

PART 4

The Supervising Authority for a School Company

Designation of a supervising authority by a school company

17.—(1) Each school company must have a local education authority designated as its supervising authority.

(2) Where the governing bodies of maintained schools who are members of a school company, are all from schools which are maintained by one local education authority, then, subject to paragraph (5), that local education authority is the supervising authority for that school company and the school company shall designate it as such.

(3) Where the membership of a school company includes governing bodies of maintained schools maintained by more than one local education authority and there is only one relevant local education authority that is not a member of the school company then, subject to paragraph (5), that local education authority is the supervising authority for the school company and the school company shall designate it as such.

(4) A school company shall designate its supervising authority in accordance with this regulation by serving written notice of the designation on the supervising authority and all relevant local education authorities within 28 days of these Regulations applying to the company.

(5) Where one of the purposes of a school company is to provide services or facilities for schools and the company considers it likely that it will be competing with the local education authority who would be its supervising authority, the company may request the Secretary of State to designate a different local education authority as the company's supervising authority.

Designation of a supervising authority by the relevant local education authorities

18.—(1) This regulation applies to any school company where neither regulation 17(2) nor 17(3) applies.

(2) Where this regulation applies the relevant local education authorities must:-

- (a) agree which of them to designate as the supervising authority within 28 days of this regulation applying to the company; or, in the absence of such agreement,
- (b) notify the Secretary of State, in writing, that they cannot agree, within 28 days of this regulation applying to the company, and request that he designate a supervising authority for the school company.

Designation of a supervising authority by the Secretary of State

19.—(1) Where the Secretary of State designates a local education authority as the supervising authority for a company he shall serve written notice of the designation on the supervising authority, the company and all the relevant local education authorities specifying the date on which the designation takes effect.

(2) The Secretary of State may, where he has designated a local education authority as the supervising authority, revoke that designation and may designate another relevant local education authority as the school company's supervising authority.

Written notice required when the Secretary of State revokes the designation of a supervising authority

20.—(1) The Secretary of State may revoke the designation of a supervising authority and designate a new supervising authority under regulation 19(2) by serving written notice of the revocation and designation on the school company, the supervising authority and all the relevant local education authorities.

(2) Any such notice must specify the date on which the local education authority designated as the supervising authority ceases to be the supervising authority and either:-

- (a) specify the new supervising authority and the date on which it becomes the new supervising authority; or
- (b) specify the date by which the relevant local education authorities must notify the Secretary of State either-
 - (i) of the authority which they have agreed to designate as the supervising authority; or
 - (ii) that they cannot agree and request that he designate a supervising authority for the company.

Supervising authority may resign

21. Where a local education authority has been designated as the supervising authority for a school company by agreement under regulation 18(2)(a), 20(2)(b)(i) or 23(a), that authority may, after it has been the supervising authority for two years, resign from its role as supervising authority by serving 56 days notice on the company and all the relevant local education authorities.

Circumstances in which the supervising authority must resign

22. If the supervising authority of a school company is a relevant local education authority and all the governing bodies of schools maintained by the supervising authority cease to be members of the company, the supervising authority must resign from its role as supervising authority by serving 56 days notice on the company and all the relevant local education authorities.

Procedure where a supervising authority resigns

23. Where a supervising authority resigns under regulation 21 or 22 the relevant local education authorities must, within 28 days of receipt of the notice, either:-

- (a) agree which authority to designate as the supervising authority; or, in the absence of such agreement,
- (b) notify the Secretary of State that they cannot agree and request that he designate a supervising authority for the school company.

Notification required if a company ceases to be a school company

24. If a company ceases to be a school company it shall notify its supervising authority in writing of that fact within 7 days and specify the date on which it ceased to be a school company. The supervising authority shall notify any other relevant local education authorities and the Secretary of State that the company has ceased to be a school company within 28 days of receipt of the notice from the company.

Initial functions of a supervising authority

25. When a local education authority becomes the supervising authority for a school company it must provide the Secretary of State with the following information, in writing, within 28 days of becoming the supervising authority:-

- (a) the members of the company;
- (b) the name and registered number of the company; and
- (c) the fact that it is the supervising authority for the company.

Duties of a supervising authority

26. A supervising authority has a duty to:-

- (a) monitor the management and finances of the school company; and
- (b) notify members of the company and relevant local education authorities if it considers that the company is poorly managed or there is a risk of the company becoming insolvent.

Duty to notify Secretary of State

27. A supervising authority must notify the Secretary of State, in writing within 28 days, of the following events:-

- (a) changes to the company's membership, name and registered number; and
- (b) if it ceases to be a relevant local education authority.

Duty of a school company to provide information and accounts to its supervising authority

28.—(1) A school company must, within 10 months of a governing body of a maintained school becoming a member of the company, prepare audited accounts covering the first six months of its operation as a school company and provide a copy of those audited accounts to its supervising authority.

(2) A school company must provide a copy of its annual audited accounts to its supervising authority within 28 days of the audited accounts being approved or qualified by its auditors.

(3) A school company must provide a copy of its constitution to its supervising authority within 28 days of that local education authority becoming the company's supervising authority.

(4) A school company must, within 28 days of any changes to its constitution being made, provide a copy of its amended constitution to the supervising authority and notify the authority of the date on which the changes took effect.

Powers of a supervising authority

29. A supervising authority may exercise the following powers:-

- (a) it may direct the company to provide it with such information on the company's constitution, finances, management and contracts to which the company is a party, as the supervising authority requests;
- (b) it may direct the company to take specified steps in order to comply with these Regulations;
- (c) it may direct the governing body of a maintained school which is a member of the company to reduce its involvement in the management of the company in accordance with regulation 32;
- (d) it may direct the governing body of a maintained school which is a member of the company to resign as a member of the company in accordance with regulation 33.

Circumstances where a supervising authority must direct a governing body

30.—(1) A supervising authority must direct the governing body of a maintained school to either reduce its involvement in the management of the school company or resign as a member of the company in the following circumstances:-

- (a) the school is subject to special measures;
- (b) the school has serious weaknesses;
- (c) the supervising authority considers that the school is likely to become subject to special measures or be assessed as having serious weaknesses within the next year; or
- (d) the school has a deficit budget.

(2) A supervising authority must direct all the governing bodies of maintained schools who are members of a school company to resign as a member of the company if it fails to comply with a direction under regulation 29(b).

Procedures relating to directions from a supervising authority

31.—(1) Before a supervising authority may direct a governing body to either reduce its involvement in the management of a school company or resign as a member of the company, it must give the governing body and the company a warning notice stating its intention to make such a direction and its reasons for doing so. Such a warning notice must be served at least 28 days before the direction is issued.

(2) The governing body or the company may make representations to the supervising authority following receipt of a warning notice, stating why they consider the intended direction to be inappropriate. Any such representations must be served on the supervising authority, in writing, within 14 days of receipt of the warning notice.

Direction to a governing body to reduce its involvement in the management of a school company

32. Where a supervising authority directs a governing body to reduce its involvement in the management of the company the governing body must:-

- (a) give notice as soon as practicable to the company and to each of the company members that it has been so directed;
- (b) secure that employees of the governing body or of the local education authority who are employed to work at the school are not actively engaged in the company's affairs within 28 days of the direction, without prejudice to any right of the governing body to be represented at meetings of the members; and

- (c) cease to make any payments to the school company unless such payments are required to settle outstanding liabilities or to pay for goods, facilities or services required by the school.

Direction to a governing body to resign from a school company

33. Where a supervising authority directs a governing body to resign as a member of the company the governing body shall, within 7 days of the direction, give the company 12 weeks notice of its resignation. During that notice period it shall, as soon as practicable:-

- (a) secure that employees of the governing body or of the local education authority who are employed to work at the school, are not actively engaged in the company's affairs, without prejudice to any right of the governing body to be represented at meetings of the members;
- (b) cease to make any payments to the school company unless such payments are required to settle outstanding liabilities or to pay for goods, facilities or services required by the school.

Notification and revocation of a direction to a governing body

34.—(1) Where a supervising authority directs a governing body to resign as a member of the company, the supervising authority must notify the company of the direction to the governing body within 7 days of issuing the direction.

(2) A supervising authority may, at any time, revoke a direction given to a governing body under regulation 29 by informing the governing body, in writing, that the direction is revoked.

SCHEDULE 1

Regulation 5

Individuals who cannot be members of a school company

The following individuals shall not be admitted or permitted to remain as members of a school company -

- 1.** A person who has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded;
- 2.** A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 3.** A person who is subject to a disqualification order under the Company Directors Disqualification Act 1986 (a);
- 4.** A person who has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy or which he by his conduct contributed to or facilitated;
- 5.** A person who has been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (b) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(a) 1986 c.46.
(b) 1990 c.40.

6. A person who is included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted which is kept for the purposes of regulations made under section 218 of the Education Reform Act 1988;

7. A person who is disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school by virtue of any order made under section 470 or section 471 of the Education Act 1996;

8. A person who is subject to a direction under section 142 of the 2002 Act which prohibits him from carrying out work to which that section applies, unless the direction specifies that he may carry out work to which that section applies if certain conditions or circumstances are fulfilled and the conditions or circumstances in relation to him being a member of a school company are fulfilled;

9. A person who either during his membership of the company, or in the period of five years ending with the date on which his membership of the company would otherwise have taken effect has been convicted, whether in the United Kingdom or anywhere else, of an offence, the facts of which give rise to a criminal offence under English law, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;

10. A person who within the period of 20 years ending with the date on which his membership of the company would otherwise have taken effect has been convicted as stated in paragraph 9 of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years;

11. A person who at any time has been convicted as stated in paragraph 9 of any offence and has had passed on him a sentence of imprisonment for a period of not less than five years;

12. A person who has not attained the age of 18;

13. A person who is liable to be detained under the Mental Health Act 1983 (a);

14. A person who is employed by the governing body of a maintained school or who is employed by a local education authority.

26th November 2002

David Miliband
Minister of State
Department for Education and Skills

(a) 1983 c.20.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the operation of companies formed or joined by governing bodies of maintained schools using their powers under section 11 of the Education Act 2002. The Regulations refer to the companies which they apply to as “school companies”. Companies which are formed with the purpose of facilitating or entering into agreements under the private finance initiative are excluded from the ambit of these Regulations and separate regulations which have not yet been made will apply to those companies instead.

Regulation 5 and Schedule 1 set out the persons who are permitted to become and those prohibited from becoming, members of school companies.

Regulation 6 requires a school company’s constitution to limit the circumstances in which the company may enter into contracts in which its directors have an interest, if the constitution permits such contracts at all. A school company may only enter into a contract in which a director has an interest if the company needs the goods or services to be provided under the contract and the company is not paying an inflated price for them.

Regulation 7 requires a school company’s constitution to provide that where a director of the company has an interest in any matter under discussion by the board of directors he must declare his interest and withdraw from the meeting without taking any part in the discussion or vote on the matter.

Regulation 8 requires a school company to have at least 40% of its board of directors be non-executive directors and deals with the process for deciding remuneration of executive directors. The company must establish a remuneration committee made up of non-executive directors only. The company’s constitution must provide that either the remuneration committee will decide director’s salaries or that the whole board of directors will do so following a recommendation from the remuneration committee.

Regulation 9 allows a director to be present for discussion of benefits which accrue to all executive directors equally, such as pension provision and insurance, but it prohibits him from being present whilst his own terms of service and remuneration are under discussion.

Regulation 10 requires the school company’s constitution to set out how any surplus funds generated by the company may be either re-applied for the company’s objects or divided among the members.

Regulation 11 requires the company’s constitution to prevent the company from borrowing at all unless it has the permission of its supervising authority to do so. Part 4 of the regulations deal with a school company’s supervising authority.

A governing body which is a member of a school company is limited in the circumstance in which it can make payments into company funds by regulation 12. It can only make payments for goods and services that it has received from the company or where such payments are necessary or expedient to enable the company to pursue its objects.

Regulation 13 requires a maintained school governing body to either resign from a school company or reduce their involvement in the management of the company in accordance with regulation 32 if the school’s delegated budget is suspended.

The constitution of a school company must require members to give 12 weeks notice of their resignation from the company (regulation 14).

Under section 12(1) of the Education Act 2002 a governing body of a maintained school is required to obtain the permission of its local education authority before forming or joining a

school company. Regulation 15 sets out the grounds on which a local education authority may refuse permission to a governing body to become a member of a school company. Where the local education authority does refuse its permission, regulation 16 requires it to provide written reasons for the refusal to the governing body.

Regulation 17 sets out the requirement for a school company to have a local education authority as its supervising authority and specify how the supervising authority for a company is to be selected. If all the maintained school governing bodies who are members of the school company are from the same local education authority then that local education authority is designated as the supervising authority for the company.

If there is one local education authority which maintains schools whose governing bodies are members of the school company and which is not a member of the company itself then that local education authority is the supervising authority for the company.

In the remaining circumstances regulation 18 will apply and the relevant local education authorities must either decide amongst themselves which of them will be designated as the supervising authority or, if they cannot agree, request the Secretary of State to designate a supervising authority for the company.

Regulation 17 also allows a school company to request the Secretary of State to designate a different local education authority to be the company's supervising authority if the company is to provide services or facilities to schools and the operation of the Regulations would result in a local education authority which the company would be in competition with becoming the company's supervising authority.

Regulation 19 provides that the Secretary of State shall serve written notice on the school company, its relevant local education authorities and the supervising authority when he designates a supervising authority for the company. It also allows the Secretary of State to revoke a designation of a local education authority as supervising authority for a school company and replace that with a newly designated supervising authority.

Regulation 20 provides that revocation and designation of supervising authority status must be notified in writing to the company, the supervising authority and the relevant local education authorities stating the dates on which the status change takes effect.

Where the relevant local education authorities for a school company agree amongst themselves which authority will be designated as the supervising authority then that authority may resign after two years as the supervising authority (regulation 21).

If the supervising authority for a company maintains schools whose governing bodies are members of the company and all those governing bodies leave the company then regulation 22 requires the supervising authority to resign by giving 56 days notice.

If a supervising authority resigns from its role, regulation 23 provides that the relevant local education authorities should agree a new supervising authority or request the Secretary of State to appoint a new one if they cannot agree.

Regulation 24 requires a school company to notify its supervising authority if its membership changes so that it ceases to be governed by these Regulations, and the supervising authority must notify the Secretary of State that this is the case.

The supervising authority of a company has initial duties to notify the Secretary of State of the particulars of its company when it becomes the supervising authority under regulation 25, and ongoing duties to monitor the finances and management of the company under regulation 26. It must notify members of the company and relevant local education authorities if it considers that the company is poorly managed or there is a risk that the company may become insolvent.

The supervising authority of a company is required by regulation 27 to notify the Secretary of State of changes to the company's name, registered number and any change in membership of the

company. It must also notify the Secretary of State if the membership of the company no longer contains any governing bodies of schools which it maintains.

Regulation 28 requires a school company to provide a copy of its audited accounts to its supervising authority at regular intervals. When the company is either first incorporated as a school company or first includes members which bring it within the ambit of these regulations then the company must provide audited accounts of its first 6 months of operation as a school company to the supervising authority within 10 months of becoming a school company. After that the requirement reduces to providing annual audited accounts to the supervising authority, unless the supervising authority directs more frequent reports on the company's finances under regulation 29.

Regulation 28 also requires a school company to provide its supervising authority with a copy of its memorandum and articles of association and to notify the authority of changes to its constitution and provide them with a copy of its amended constitution.

Regulation 29 sets out the powers which a supervising authority has over a school company. There are four ways in which the authority can direct in relation to the company. Firstly it can direct the company to provide it with information. Secondly it can direct a company to take steps to comply with the regulations. Thirdly it can direct a company member which is a governing body of a maintained school to reduce its involvement in the management of the company. Fourthly it can direct a maintained school governing body to resign its membership of the company.

There are circumstances set out in regulation 30 where the supervising authority must direct the governing body of a maintained school to either reduce its involvement in the management of the company or resign its membership of the company. These are where the school becomes subject to special measures, is assessed as having serious weaknesses, the school has a deficit budget or the supervising authority considers that the school is likely to go into special measures or be assessed as having serious weaknesses. Further, the supervising authority must direct the governing bodies of maintained schools which are members of a school company to resign from the company if the company disobeys a direction to comply with these Regulations.

Regulation 31 provides that a supervising authority must serve a warning notice on a school company and a governing body if it is intending to direct a governing body to reduce its involvement or resign from the company. That notice must be served at least 28 days before the direction is issued. It also allows the governing body and the company 14 days to make written representations opposing the direction.

Regulation 32 sets out how a governing body is to reduce its involvement in the management of a school company when it is directed to do so by the supervising authority. It must ensure that the school staff are not engaged in the company's affairs within 28 days and it must cease to make payments to the school company apart from to settle outstanding liabilities or to pay for goods, facilities or services required by the school.

Regulation 33 sets out what a governing body must do when it is directed to resign from a school company by the supervising authority. It must reduce its involvement in the company in line with regulation 32 as soon as practicable, and it must, within 7 days of the direction, give the company 12 weeks notice of its resignation.

Regulation 34 permits a supervising authority to revoke any direction given to a governing body by informing the governing body in writing that the direction is revoked.

STATUTORY INSTRUMENTS

2002 No. 2978

EDUCATION ENGLAND

The School Companies Regulations 2002

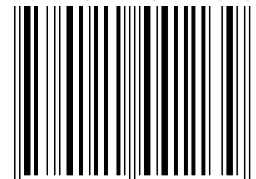
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