

2003 No. 348

EDUCATION, ENGLAND

School Governance (Constitution) (England) Regulations 2003

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Coming into force

Regulations 1, 2(1) and (3), and 3 to 33 *20th March 2003*

Regulation 2(2) and 34 *1st September 2003*

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In exercise of the powers conferred on the Secretary of State by section 19(2) and (3), section 20(2) and (3), section 210(7), section 214(1) and (2)(b) of the Education Act 2002^(a) and all other powers enabling him in that behalf, the Secretary of State for Education and Skills hereby makes the following Regulations:

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the School Governance (Constitution) (England) Regulations 2003 and shall come into force on 20th March 2003, except for paragraph (2) of regulation 2, and regulation 34 and Schedule 7, which will come into force on 1st September 2003.

(2) These Regulations apply only in relation to England.

Revocations savings and amendments

2.—(1) The Education (School Government) (Transition to New Framework) Regulations 1998^(b) are hereby revoked.

(2) Regulations 1 to 20 and regulation 58 of the Education (School Government) (England) Regulations 1999^(c) are revoked with effect from 1st September 2003, except for the following provisions which remain in force in respect of every maintained school until a new instrument of government is made for the school in accordance with regulation 33—

Regulation 1 except for the words “and new schools” in paragraph (3);

Regulation 2(1) except for the definitions of “the First Transitional Regulations”, “new school” “School Organisation Regulations”, “the Second Transitional Regulations” and “selection panel”;

Regulation 2(2) except for the definitions of “temporary governing body” and “temporary governors”;

Regulation 3 except for the words “or temporary governing body (however constituted)” and “or (as the case may be) new school”;

Regulation 4 except for the words in brackets, for which are substituted the words “in accordance with the 1998 Act”;

Regulation 5(1) (a) except for the words “or will maintain” and “or a new school”; and after the words “for which an instrument of government has been made” are added the words “in accordance with the 1998 Act”;

Regulation 5(2) (i) (iii) and (iv), except for the words “and (b)” and the words “or, in the case of a new school which has not opened, the diocesan authority which will be the appropriate diocesan authority when the school opens”;

^(a) 2002 c.32; by virtue of the definition of “regulations” in section 212(1), these Regulations made by the Secretary of State apply only in relation to England.

^(b) SI 1998/2763.

^(c) SI 1999/2163.

Regulation 6(1) and Schedule 1;

Regulations 9 to 12 and Schedules 2 to 4;

Regulation 15 except for the words “Subject to Part VIII (transitional provisions), Schedule 5 sets”, for which are substituted “Paragraphs (12) to (16) of Schedule 5 to these Regulations and Schedule 6 of the School Government (Constitution) (England) Regulations 2003 set”, and paragraphs (12) to (16) of Schedule 5;

Regulations 16, except in paragraph (1) for the words “Part VIII (transitional provisions) and to”;

Regulations 17;

Regulation 18 except in paragraph (1) for the words “and to Part VIII (transitional provisions)”;

Regulations 19 and 20.

(3) Paragraph (1) of regulation 31 of the Education (New Schools) (England) Regulations 1999**(a)**, is amended by substituting the words “Part 5 of the School Governance (Constitution) (England) Regulations 2003” for the words “Schedule 12 to the 1998 Act”.

Interpretation

3.—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996**(b)**;

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

“the 2002 Act” means the Education Act 2002;

“parent” includes any individual who has or has had parental responsibility for, or cares, or has cared for, a child or young person under the age of 18.

(2) Any reference in these Regulations to—

(a) the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies;

(b) a governor is a reference to a member of a governing body of any school to which the provision applies;

(c) the local education authority is a reference to the local education authority that maintains the school.

PART 2

Categories of Governor

Parent governors

4.—(1) In these Regulations “parent governor” means—

(a) a person who is elected in accordance with paragraphs 4 to 8 of Schedule 1 as a governor by parents of registered pupils at the school and is himself such a parent at the time when he is elected, or

(b) a person appointed as a parent governor in accordance with paragraphs 9 to 11 of Schedule 1.

(a) SI 1999/2262; this regulation is also amended by regulation 8 of the Education Act 2002 (Transitional Provisions etc) (England) Regulations 2002 (SI 2002/2113).

(b) 1996 c.56.

(c) 1998 c.31.

(2) A person is disqualified from election or appointment as a parent governor of a school if he is—

- (a) an elected member of the local education authority; or
- (b) paid to work at the school for more than 500 hours in any twelve month period commencing on 1st August and finishing on 31st July.

(3) A person is not disqualified from continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in paragraphs 10 and 11 of Schedule 1 (as the case may be) unless he is otherwise disqualified under these Regulations.

Staff governors

5.—(1) In these Regulations “staff governor” means—

- (a) the head teacher, who is a staff governor by virtue of his office unless he resigns the position in accordance with regulation 22(1);
- (b) a person who is elected in accordance with Schedule 2 as a governor by persons who are paid to work at the school and is himself a person so working at the time when he is elected.

(2) At least one staff governor (in addition to the head teacher) must be a school teacher unless no school teacher stands for election.

(3) Where the school’s instrument of government(a) specifies that there shall be three or more staff governors, at least one staff governor must be a person who is not a school teacher, unless no such person stands for election.

(4) Prior to the coming into force of section 122 of the 2002 Act, when it shall be interpreted in accordance with that provision, “school teacher” means a teacher who is employed by—

- (a) a local education authority, or
- (b) the governing body,

in the provision of primary or secondary education.

(5) Upon ceasing to work at the school, a staff governor of a school will be disqualified from continuing to hold office as such a governor.

LEA governors

6.—(1) In these Regulations “LEA governor” means a person who is appointed as a governor by the local education authority.

(2) A person is disqualified from appointment as a LEA governor of a school if he is eligible to be a staff governor of the school.

Community governors

7.—(1) In these Regulations “community governor” means a person who is appointed as a governor by the governing body and who is—

- (a) a person who lives or works in the community served by the school, or
- (b) a person who, in the opinion of the governing body, is committed to the good government and success of the school.

(2) In the case of a community special school or a foundation special school (b) the governing body must appoint as one of the community governors a person nominated in accordance with Schedule 3.

(a) Within the meaning of section 20 of the 2002 Act.
(b) Within the meaning of section 20 of and Schedule 2 to the 1998 Act.

(3) A person is disqualified from appointment as a community governor of a school if he is—

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

Foundation governors

8.—(1) In these Regulations—

“foundation governor” means a person who is appointed as a governor otherwise than by the local education authority and who—

- (a) where the school has a particular religious character^(a), is appointed for the purpose of securing that that character is preserved and developed,
- (b) where there is a trust relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with that trust, or
- (c) where the school does not have a religious character and there is no trust relating to it, is appointed as a foundation governor of the school;

“ex officio foundation governor” means a foundation governor who is the holder of an office by virtue of which he is entitled to be a foundation governor;

“substitute governor” means a foundation governor appointed to act in the place of an ex officio foundation governor who is unwilling or unable to act as a governor or has been removed from office under regulation 23(2).

(2) One fifth or more of the persons appointed to the governing body of a voluntary aided school as foundation governors must be persons who are eligible for election or appointment as parent governors.

(3) An ex officio foundation governor will, upon ceasing to hold the office from which his governorship derives, be disqualified from continuing to hold office as such a governor.

Partnership governors

9.—(1) In these Regulations “partnership governor” means a person who is nominated as a partnership governor and appointed as such in accordance with Schedule 4.

(2) A person is disqualified from nomination or appointment as a partnership governor of a school if he is—

- (a) a parent of a registered pupil at the school;
- (b) a registered pupil at the school;
- (c) eligible to be a staff governor of the school;
- (d) an elected member of the local education authority; or
- (e) employed by the local education authority in connection with its functions as a local education authority.

Sponsor governors

10. In these Regulations “sponsor governor” means a person who is nominated as a sponsor governor and is appointed as such by the governing body in accordance with Schedule 5.

Associate members

11.—(1) In these Regulations “associate member” means a person who is appointed by the governing body as a member of any committee established by it but who is not a governor.

^(a) As designated by Order of the Secretary of State under section 69(3) of the 1998 Act.

(2) An associate member may hold office for a period of four years, or such shorter period (not being less than one year) as may be determined by the governing body at the date of his appointment.

(3) Nothing in this regulation shall prevent an associate member from being reappointed at the expiration of his term of office.

(4) Any person who is disqualified from holding office as a governor of a school under Schedule 6 is likewise disqualified from holding or continuing to hold office as an associate member of the governing body, save as provided in paragraph 1 of Schedule 6.

PART 3

Composition of governing bodies

General principles

12.—(1) The instrument of government of a school must specify the size of the membership of the governing body, which must be no fewer than 9 or more than 20 governors.

(2) In determining the size of its membership, the governing body must not include—

- (a) any sponsor governors, or
- (b) additional foundation governors appointed in accordance with regulation 16(2) (b).

(3) Subject to regulations 13 to 16, the instrument of government must specify the numbers of governors from each of the following categories of governor to be elected or appointed—

- (a) parent governor;
- (b) staff governor;
- (c) LEA governor;
- (d) community governor;
- (e) foundation governor;
- (f) partnership governor;
- (g) sponsor governor.

(4) In calculating the number of governors required in each category in accordance with regulations 13 to 16 the number must be rounded up or down to the nearest whole number.

(5) In calculating the number of staff governors required, the head teacher must be included whether or not he has resigned his governorship.

Community schools, maintained nursery schools and community special schools

13.—(1) The governing body of a community school, a maintained nursery school or a community special school^(a) must comprise the following:

- (a) one third or more must be parent governors;
 - (b) at least two but no more than one third must be staff governors;
 - (c) one fifth must be LEA governors; and
 - (d) one fifth or more must be community governors.
- (2) The governing body may in addition appoint up to two sponsor governors.

^(a) Within the meaning of section 20 of and Schedule 2 to the 1998 Act and section 39(1) of the 2002 Act.

Foundation schools and foundation special schools

14.—(1) The governing body of a foundation school or a foundation special school (a) must comprise the following:

- (a) one third or more must be parent governors;
 - (b) at least two but no more than one third must be staff governors;
 - (c) at least one but no more than one fifth must be LEA governors;
 - (d) one tenth or more must be community governors; and
 - (e) at least two but no more than one quarter must be foundation governors or, where the school does not have a foundation, partnership governors.
- (2) The governing body may in addition appoint up to two sponsor governors.

Voluntary controlled schools

15.—(1) The governing body of a voluntary controlled school(b) must comprise the following:

- (a) one third or more must be parent governors;
 - (b) at least two but no more than one third must be staff governors;
 - (c) at least one but no more than one fifth must be LEA governors;
 - (d) one tenth or more must be community governors; and
 - (e) at least two but no more than one quarter must be foundation governors.
- (2) The governing body may in addition appoint up to two sponsor governors.

Voluntary aided schools

16.—(1) The governing body of a voluntary aided school (c) must comprise the following:

- (a) at least one but no more than one tenth must be LEA governors;
 - (b) at least two but no more than one third must be staff governors;
 - (c) at least one must be a parent governor;
 - (d) such number of foundation governors as out number all the other governors listed in subparagraphs (a) to (c) by two; and
 - (e) such number of foundation governors appointed in accordance with regulation 8(2) as, when they are counted with the parent governors, comprise one third or more of the total membership of the governing body.
- (2) In addition—
- (a) the governing body may appoint up to two sponsor governors; and
 - (b) the person who is entitled to appoint foundation governors may appoint such number of additional foundation governors (up to two) as are required to preserve their majority.

Notification of appointments

17. Where any person makes an appointment or nominates a person to be appointed to the governing body, he shall give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed or nominated.

(a) Within the meaning of section 20 of and Schedule 2 to the 1998 Act.
(b) Within the meaning of section 20 of and Schedule 2 to the 1998 Act.
(b) Within the meaning of section 20 of and Schedule 2 to the 1998 Act.

Joint appointments

18. If—

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

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

Surplus governors

19. Where a maintained school has more governors of a particular category than are provided for by the instrument of government for the school, a governor of that category may serve out his term of office.

PART 4

Qualifications and tenure of office

Qualifications and disqualifications

20. Schedule 6 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor.

Term of office

21.—(1) Subject to paragraphs (2) to (5), a governor shall hold office for a fixed period of four years from the date of his election or appointment.

(2) Paragraph (1) does not apply to any staff governor who is the head teacher of the school, or to any ex officio foundation governor, who may hold office for as long as he holds the position from which his governorship derives.

(3) Paragraph (1) does not apply to any additional governor, additional foundation governor or interim executive member appointed under sections 16(a), 16A(b), 18(c) or 18A(d) of the 1998 Act whose term of office will be determined by the person who appointed him, up to a maximum of 4 years.

(4) The instrument of government may specify a shorter term of office for a particular category of governor, not being less than 1 year.

(5) A substitute governor(e) may hold office until the earlier of the following—

- (a) the expiry of four years from the date when his appointment takes effect;
- (b) the date when the original governor (not having been removed from office under regulation 23 (2)) 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 foundation governorship exists.

(6) This regulation does not prevent a governor from—

- (a) being elected or appointed for a further term, save as otherwise provided in these regulations;

(a) Amended by section 56 of the 2002 Act.

(b) Inserted by section 57 of the 2002 Act.

(c) Amended by section 56 of the 2002 Act.

(d) Inserted by section 58 of the 2002 Act.

(e) Defined by regulation 8(1).

- (b) resigning his office in accordance with regulation 22(1);
- (c) being removed from office under regulations 23 to 26; or
- (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(7) In this regulation “the original governor” means the ex officio foundation governor in whose place the substitute governor is appointed to act.

Resignation

22.—(1) A governor may at any time resign his office by giving written notice to the clerk to the governing body.

(2) The head teacher may withdraw his resignation at any time by giving written notice to the clerk to the governing body.

(3) An ex officio foundation governor may resign as governor either permanently or temporarily, but his resignation shall not prejudice the ex officio governorship of his successor in the office from which the ex officio governorship derives.

Removal of LEA and foundation governors

23.—(1) Any LEA governor or foundation governor may be removed from office by the person who appointed him, who must give written notice thereof to the clerk to the governing body and to the governor so removed.

(2) The governing body may, in accordance with the procedure set out in regulation 26, remove any ex officio foundation governor at the request of the person named in the instrument of government as the person entitled to make such a request, if the governing body thinks fit.

(3) A person proposing the removal of an ex officio foundation governor must inform the clerk to the governing body and the governor in question in writing of the reasons why he is proposing his removal.

Removal of community governors and sponsor governors

24.—(1) Any community governor or sponsor governor may be removed from office by the governing body in accordance with the procedure set out in regulation 26.

(2) The governing body may, in accordance with the procedure set out in regulation 26, remove any community governor appointed in accordance with Schedule 3, or any sponsor governor at the request of the nominating body, if the governing body thinks fit.

(3) A nominating body proposing the removal of such a governor shall inform the clerk to the governing body and the governor in question in writing of the reasons why it is proposing his removal.

(4) In this part “nominating body” means any person from whom nominations were sought for the purpose of appointing, and who nominated, the governor in question.

Removal of appointed parent governors

25. Any parent governor appointed by the governing body under paragraphs 9 to 11 of Schedule 1 may be removed by the governing body in accordance with the procedure set out in regulation 26.

Procedure for removal of governors by the governing body

26.—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulation 23(2), 24 or 25.

(2) A resolution to remove a governor from office which is passed at a meeting of the governing body will not have effect unless—

- (a) in relation to the removal of a governor under regulation 23(2) and 24(2), before the governing body resolve to remove the governor from office, the clerk to the governing body shall give the reasons for removal provided by the person referred to in regulation 23(2) or by the nominating body (as appropriate) and the governor whom it is proposed to remove shall be given an opportunity to make a statement in response;
- (b) in relation to the removal of a community governor or a sponsor governor under regulation 24(1) or a parent governor under regulation 25, before the governing body resolve to remove the governor from office, the governor or governors proposing his removal shall at that meeting state their reasons for doing so and the governor whom it is proposed to remove shall be given an opportunity to make a statement in response;
- (c) it is confirmed by a resolution passed at a second meeting of the governing body held not less than fourteen days after the first meeting; and
- (d) the matter of the governor's removal from office is specified as an item of business on the agenda for each of those meetings.

PART 5

Instrument of Government

Interpretation of “appropriate diocesan authority” and “appropriate religious body”

27. In this Part,

“appropriate diocesan authority” shall have the meaning given by section 142(1) and (4) of the 1998 Act;

“appropriate religious body”, in relation to a school designated under section 69(3) of the 1998 Act as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body that the Secretary of State considers appropriate in relation to the religion or religious denomination to which the school belongs.

Duty to have regard to guidance

28. In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local education authorities must have regard to any guidance given from time to time by the Secretary of State.

Contents and form of instrument of government

29.—(1) The instrument of government for a maintained school must set out—

- (a) the name of the school;
- (b) the category of school to which the school belongs;
- (c) the name of the governing body of the school;
- (d) the manner in which the governing body is to be constituted in accordance with Part 3, specifying—
 - (i) the number of governors in each category of governor, and
 - (ii) the total membership of the governing body, including any sponsor governors and additional foundation governors appointed in accordance with regulation 16(2)(b);
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the school has foundation governors—
 - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis upon which such appointments are made,

- (ii) details of any foundation governorship to be held ex officio by the holder of a named office, and
- (iii) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;
- (g) where the school has sponsor governors, the name of any sponsor who is entitled to nominate persons for appointment as such governors under Schedule 5;
- (h) where the school is a maintained special school, the name of any body entitled to nominate a person for appointment as a community governor under Schedule 3;
- (i) where there is a trust relating to the school, that fact;
- (j) where the school is a foundation or a voluntary school which has a religious character, a description of the religious ethos of the school; and
- (k) the date when the instrument of government takes effect, which must not be earlier than 1st September 2003.

(2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1) (d), must accord with the provisions of these Regulations as they apply to a school of the category to which the school belongs.

(3) The instrument of government must (subject to any statutory provision) comply with any trust relating to the school.

Procedure for making an instrument

30.—(1) Subject to paragraph (6), the governing body must prepare a draft of the instrument of government and submit it to the local education authority.

(2) Where the school has foundation governors, the governing body must not submit the draft to the local education authority unless it has been approved by—

- (a) the foundation governors;
- (b) any trustees of any trust relating to the school;
- (c) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

(3) On receiving the draft the local education authority must consider whether it complies with all applicable statutory provisions, and if—

- (a) it is content that the draft so complies, or
- (b) there is agreement between it, the governing body and (if the school has foundation governors) the persons mentioned in paragraph (2) that the draft should be revised to any extent and the revised draft complies with all the applicable statutory provisions,

the instrument of government must be made by it in the form of the draft or (as the case may be) in the form of the revised draft.

(4) If, in the case of a school which has foundation governors, at any time the persons listed in paragraph (2) disagree with the draft, any of those persons may refer it to the Secretary of State who will give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(5) If neither of sub-paragraphs (a) and (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local education authority must—

- (a) inform the governing body of the reasons why it is not content with the draft instrument of government, and
- (b) give the governing body a reasonable opportunity to reach agreement with it on revising the draft;

and the instrument of government must be made by it either in the form of a revised draft agreed between it and the governing body or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(6) In the case of a maintained nursery school, the local education authority must prepare and make the first instrument of government, which must comply with all statutory provisions.

Review of instruments of government

31.—(1) The governing body or the local education authority may review the instrument of government at any time after it is made.

(2) Where on any review the governing body or the local education authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local education authority shall notify the other of its proposed variation together with its reasons for proposing such a variation.

(3) Where the governing body has received notification under paragraph (2), it must inform the local education authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

(4) Where the school has foundation governors, the governing body must not give the local education authority—

- (a) any notification under paragraph (2), or
- (b) inform the authority under paragraph (3) that it is content with the authority's proposed variation,

unless the persons listed in regulation 30(2) have approved the proposed variation.

(5) If—

- (a) whichever of the governing body and the local education authority is the recipient of a notification under paragraph (2) agrees with the proposed variation, or
- (b) there is agreement between the local education authority, the governing body and (if the school has foundation governors) the other persons listed in regulation 30(2) that some other variation should be made instead,

the instrument of government must be varied accordingly by the local education authority.

(6) If, in the case of a school which has foundation governors, at any time the persons listed in regulation 30(2) disagree with the proposed variation any of those persons may refer it to the Secretary of State; and on such a reference the Secretary of State will give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local education authority must—

- (a) inform the governing body of the reasons—
 - (i) why it is not content with the governing body's proposed variation, or as the case may be,
 - (ii) why it wishes to proceed with its own variation, and
- (b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation;

and the instrument of government must be varied by it either in the manner agreed between it and the governing body or (in the absence of such agreement) in such manner as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(8) Nothing in this regulation is to be taken as requiring the local education authority to vary the instrument of government if it does not consider it appropriate to do so.

(9) The requirement under regulation 30(3) for the local education authority to consider compliance with all applicable statutory provisions, applies in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument.

(10) Where an instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect.

Other requirements relating to instruments of government

32.—(1) The local education authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with—

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

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

- (a) every member of the governing body of the school;
- (b) the head teacher, whether or not the head teacher is a member of the governing body;
- (c) the trustees of any trust relating to the school;
- (d) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and
- (e) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

Duty to secure making of instruments of government

33. A local education authority shall make an instrument of government in accordance with these Regulations for each school which is maintained by them, no later than 31st August 2006.

PART 6

Transitional Provision

Transitional provision

34. Schedule 7 has effect for the purpose of continuing the term of office of governors on transition to an instrument of government made in accordance with these Regulations.

18th February 2003

David Miliband
Minister of State
Department for Education and Skills

SCHEDULE 1

(Regulation 4)

Election and appointment of parent governors

- 1.** Subject to paragraphs 2 and 3 in this Schedule “appropriate authority” means—
 - (a) in relation to a community school, a community special school, a maintained nursery school or a voluntary controlled school, the local education authority;
 - (b) in relation to a voluntary aided school, foundation school or foundation special school, the governing body.
- 2.** Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.
- 3.** The local education authority shall be the appropriate authority in relation to a school within paragraph 1(b) if the governing body and the local education authority so agree.
- 4.** Subject to paragraphs 5 to 8 the appropriate authority must make all the necessary arrangements for the election of parent governors.
- 5.** The power conferred by paragraph 4 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.
- 6.** Any election which is contested must be held by ballot.
- 7.**—(1) The arrangements made under paragraph 4 must provide for every person who is entitled to vote to have an opportunity to do so by post.
 - (2) For the purposes of sub-paragraph (1), “post” includes delivery by hand.
 - (3) The arrangements made under paragraph 4 may provide for every person who is entitled to vote to have an opportunity to do so by electronic means.
- 8.** Where a vacancy for a parent governor arises, the appropriate authority must 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;
 - (b) informed that he is entitled to stand as a candidate and vote in the election; and
 - (c) given the opportunity to do so.
- 9.** The number of parent governors required must be made up by parent governors appointed by the governing body, if one or more vacancies for parent governors arises and either—
 - (a) the number of parents standing for election is less than the number of vacancies;
 - (b) at least 50 per cent of the registered pupils at the school are boarders and it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors; or
 - (c) in the case of a school which is a community special or foundation special school established in a hospital, it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors.
- 10.**—(1) Except where paragraph 11 applies, the governing body must appoint as a parent governor—
 - (a) a parent of a registered pupil at the school;
 - (b) a parent of a former registered pupil at the school; or
 - (c) a parent of a child under or of compulsory school age.

(2) The governing body may only appoint a person referred to in sub-paragraph (1) (b) or (c) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.

11.—(1) Where the school is a community special school or a foundation special school, the governing body must appoint—

- (a) a parent of a registered pupil at the school;
- (b) a parent of a former registered pupil at the school;
- (c) a parent of a child under or of compulsory school age with special educational needs for which the school is approved; or
- (d) a parent with experience of educating a child with special educational needs.

(2) The governing body may only appoint a person referred to in sub-paragraph (1) (b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.

SCHEDULE 2

(Regulation 5)

Election of staff governors

1. In this Schedule “appropriate authority” has the same meaning as in Schedule 1.

2. Where an authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.

3. Subject to paragraphs 4 and 5, the appropriate authority must make all the necessary arrangements for the election of staff governors.

4. The power conferred by paragraph 3—

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

5. Any election which is contested must be held by ballot.

SCHEDULE 3

(Regulation 7(2))

Appointment of community governors at community special schools and foundation special schools

1. Subject to paragraphs 2 and 3, the governing body of a community special school or a foundation special school must appoint community governors in accordance with regulation 7(1).

2.—(1) In relation to a community special school or foundation special school established in a hospital, the local education authority must designate—

- (a) one or more primary care trusts, or
- (b) the National Health Service Trust

with which the school is most closely connected as the appropriate body.

(2) The governing body must invite the appropriate body to nominate a person to be appointed as one of the community governors in accordance with regulation 7(2).

(3) For the purposes of this paragraph—

“National Health Service Trust” means a body established by the Secretary of

State under section 5 of the National Health Service and Community Care Act 1990(a), “Primary care trust” means a body established under section 16A of the National Health Service Act (b).

3. The governing body of a community special school or a foundation special school not established in a hospital must appoint as one of their community governors—

- (a) if a voluntary organisation is designated by the local education authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised, a person nominated by that organisation; or
- (b) if two or more voluntary organisations are so designated as appropriate voluntary organisations concerned with such matters, a person nominated by those organisations acting jointly.

SCHEDULE 4

(Regulation 9)

Appointment of partnership governors

1. Where a partnership governor is required, the governing body must seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school as they consider appropriate.

2. No person may nominate for appointment, or appoint, a person as a partnership governor unless that person would be eligible for appointment by the governing body as a community governor.

3. Subject to paragraph 4(2), no governor may nominate a person for appointment as a partnership governor.

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

(2) If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body.

5. Where the governing body makes an appointment under paragraph 4(2), having rejected any person nominated under paragraph 1, it must give written reasons for its decision to the local education authority and to the person rejected.

6. The governing body must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors.

SCHEDULE 5

(Regulation 10)

Appointment of sponsor governors

1. In this Schedule, “sponsor” in relation to a school means—

- (a) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to statutory obligation; or
- (b) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school.

(a) 1990 c.19; as amended by the Health Act 1999.

(b) 1977 c.49; as amended by the Health Act 1999 and by the NHS Reform and Health Care Professions Act 2002.

2. Where the school has one or more sponsors, the governing body may determine that the instrument of government will provide for the governing body to appoint such number of sponsor governors, not exceeding two, nominated in accordance with paragraph 3.

3. The governing body must seek nominations for such appointments from the sponsor or (as the case may be) from one or more of the sponsors.

SCHEDULE 6

(Regulation 20)

Qualifications and disqualifications

General

1.—(1) No person is qualified to be a governor unless he is aged 18 or over at the date of his election or appointment.

(2) This provision does not apply to an associate member appointed under regulation 11.

2. No person shall at any time hold the office of more than one governor of the same school.

3. Save as otherwise provided in these Regulations, the fact that a person is qualified to be elected or appointed as a governor of a particular category at a school does not disqualify him from election or appointment or from continuing as a governor of any other category at that school.

Mental disorder

4. A person is disqualified from holding or for continuing to hold office as a governor of a school at any time when he is liable to be detained under the Mental Health Act 1983(a).

Failure to attend meetings

5.—(1) This paragraph applies to any governor who is not a governor by virtue of his office.

(2) A governor, who, without the consent of the governing body, has failed to attend the meetings thereof for a continuous period of six months beginning with the date of the first such meeting he failed to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that school.

(3) A foundation governor (other than an ex officio foundation governor), LEA governor, community governor, partnership governor or sponsor governor who has been disqualified as a governor of a school under sub-paragraph (2) is not qualified for election nomination or appointment as a governor of any category at that school during the twelve months immediately following his disqualification under sub-paragraph (2).

Bankruptcy

6. A person is disqualified from holding or continuing to hold office as a governor of a school if—

- (a) he 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; or
- (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

(a) 1983 c.20.

Disqualification of company directors

7. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986 (a) or to an order made under section 429(2)(b) of the Insolvency Act 1986 (b)(*failure to pay under county court administration order*).

Disqualification of charity trustees

8. A person is disqualified from holding or from continuing to hold office as a governor of a school if—

- (a) he has been removed from the office of 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 to which he contributed or which he facilitated by his conduct; or
- (b) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(c) (*powers of Court of Session to deal with management of charities*), from being concerned in the management or control of any body.

Persons whose employment is prohibited or restricted

9. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he is—

- (a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999(d);
- (b) subject to a direction of the Secretary of State under section 142 of the 2002 Act;
- (c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000(e); or
- (d) by virtue of an order made under section 470 or section 471 of the 1996 Act (f), disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.

Criminal convictions

10.—(1) Subject to sub-paragraph (6) below, a person is disqualified from holding, or continuing to hold, office as a governor of a school where any of sub-paragraphs (2) to (4) or (6) below apply to him.

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

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

(a) 1986. c.46; as amended by the Insolvency Act 2000 (2000 c.39).

(b) 1986 c.45.

(c) 1990 c.40; the functions of the Lord Advocate under this section transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (SI 1999/678).

(d) 1999 c.14; as amended by the Care Standards Act 2000 (2000 c.14).

(e) 2000 c.43.

(f) As amended by the Care Standards Act 2000.

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

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

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

(5) For the purposes of sub-paragraphs (2) to (4) above, any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom must be disregarded.

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

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

he has been convicted under section 547 of the 1996 Act^(a) or under section 85A of the Further and Higher Education Act 1992^(b) (*nuisance and disturbance on educational premises*) of an offence and has been sentenced to a fine.

Refusal to make an application for a criminal records certificate

11. A person is disqualified from holding or continuing to hold office as a governor at any time when he refuses a request by the clerk to the governing body to make an application under section 113 of the Police Act 1997^(c) for a criminal records certificate.

Notification to clerk

12. Where, by virtue of any paragraphs 6 to 10—

- (a) a person is disqualified from holding, or for continuing to hold, office as a governor of a school; and
 - (b) he is, or is proposed to become, a governor,
- he shall give notice of that fact to the clerk to the governing body.

SCHEDULE 7

(Regulation 34)

Transitional Provisions

1. In this Schedule—

“current governing body” means a governing body constituted under an instrument of government that is in effect before 1st September 2003; and

(a) As amended by the 1998 Act and by section 206 and Schedule 20 of the 2002 Act.

(b) 1992 c.13; inserted by section 206 and Schedule 20 of the 2002 Act.

(c) 1997 c.50; as amended by the Protection of Children Act 1999, the Care Standards Act 2000 and the 2002 Act.

“current governor” means any person who is appointed to or elected to office as a member of a current governing body on or before 1st September 2003 but not to any person who is reappointed or re-elected to such office after that date.

2. On or after the date on which an instrument of government made in accordance with these Regulations becomes effective, a current governor will continue as a governor of the corresponding category of governor required by the instrument of government, as if he had been appointed to or elected to such category in accordance with these Regulations, even if he does not conform to the relevant requirements imposed by these Regulations for a governor of that category.

3. For the purposes of paragraph 2, the corresponding categories shall be as follows—

<i>Category of current governor</i>	<i>Category of governor under these Regulations</i>
Co-opted governor	Community governor
Representative governor	Community governor appointed in accordance with regulation 7(2)
Foundation governor (including ex officio foundation governor)	Foundation governor
LEA governor	LEA governor
Parent governor	Parent governor
Partnership governor	Partnership governor
Staff governor	Staff governor
Teacher governor	Staff governor
Head teacher (ex officio governor)	Staff governor

4. A current governor will hold office as a governor of the corresponding category of governor under these Regulations until—

- (a) the term of office that applied at the date of his election or appointment as a current governor would have expired,
- (b) he resigns his office,
- (c) he becomes disqualified from holding or continuing to hold office as a governor under these Regulations, or
- (d) 31st August 2006

which ever is the earlier.

5. This Schedule does not prevent a current governor from—

- (a) being elected or appointed as a governor of any category required by the instrument of government for a further term, save as otherwise provided in these Regulations; or
- (b) being removed from office under regulations 23 to 26.

6. A current governor, who continues as a governor after an instrument of government made in accordance with these Regulations becomes effective, shall be included in calculating the number of governors required in each category under the instrument of government.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the new arrangements for the constitution of governing bodies of maintained schools, including maintained nursery schools, in England. After 1st September 2003, all governing bodies of new schools must be constituted in accordance with these Regulations. An existing governing body may, until 1st September 2006 choose whether to retain its existing Instrument of Government or to adopt a new one in accordance with these Regulations.

Part 1 provides for the Regulations to come into force on 20th March 2003, sets out the Regulations that are to be revoked or amended (mainly Parts I to III and Part VIII of the Education (School Government) (England) Regulations 1999 SI 1999/2163) and contains the interpretation provisions.

Part 2 describes the various categories of governor. Regulation 4 and Schedule 1 deal with parent governors and set out the basis on which a person may qualify to stand for election and to vote for a parent governor or to be appointed as a parent governor.

Regulation 5 deals with staff governors. This category includes both teaching and non-teaching staff and the head teacher of the school. The head teacher is a staff governor by virtue of his position but may resign his governorship (or withdraw his resignation) at any time. Schedule 2 deals with the election process for the other staff governors.

Regulation 6 deals with the appointment of LEA governors.

Regulation 7 sets out who is eligible for appointment as a community governor. Schedule 3 sets out provisions that apply to the appointment of community governors in special schools.

Regulation 8 deals with the appointment of foundation governors, including ex officio foundation governors and substitute governors. Regulation 9 and Schedule 4 deal with the nomination process for, and the appointment of, partnership governors.

Regulation 10 and Schedule 5 make provision for the appointment of an entirely new (and optional) category of sponsor governor.

Regulation 11 provides for the appointment of persons who are not governors (known as associate members) to committees of the governing body.

Part 3 sets out the general principles by which the size and composition of school governing bodies shall be determined. Regulations 13 to 16 set out the specific requirements for the constitution of the governing bodies of each category of school.

Regulation 17 sets out the requirements to be observed by a person wishing to exercise the power of nominating or appointing a governor. If there is any dispute between persons jointly entitled to nominate or appoint a governor, the appointment shall be made by the Secretary of State under regulation 18. Regulation 19 provides for surplus governors to serve out their term of office.

Part 4 deals with qualifications and term of office. Regulation 20 and Schedule 6 set out the circumstances in which a governor (or associate member) shall be disqualified from standing for election, being appointed or continuing in office as a governor.

Regulation 21 provides that (with some exceptions) a governor's term of office shall be a maximum of 4 years. In the event that an ex officio foundation governor is unable or unwilling to take up office, a substitute governor may be appointed. Regulation 22 sets out the procedure for resigning as a governor. Regulations 23 to 26 provide for the removal of governors who have been appointed (rather than elected) to office.

Part 5 deals with the procedure for making, reviewing and varying instruments of government and the content of instruments. The first instrument of government of a maintained nursery school will be prepared and made by the LEA. Regulation 28 sets out the duty to have regard to guidance

given by the Secretary of State in this regard. Regulation 32 sets out the duty to provide copies of the instrument of government to every member of the governing body, the head teacher, the trustees of the school (if any) and the diocesan authority or other appropriate religious body (in the case of faith schools). Regulation 33 lays a duty on LEAs to ensure that all schools have an instrument of government that conforms to these Regulations by 31st August 2006.

Part 6 and Schedule 7 enable governors appointed or elected to office prior to or on 1st September 2003 to continue in office when an instrument of government made in accordance with these Regulations comes into effect.

STATUTORY INSTRUMENTS

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