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STATUTORY INSTRUMENTS

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**2012 No. 1035**

**The School Governance (Federations)  
(England) Regulations 2012**

**PART 1**

**GENERAL PROVISIONS**

**Citation, commencement and application**

1. These Regulations may be cited as the School Governance (Federations) (England) Regulations 2012 and come into force on 1st September 2012.

2.—(1) These Regulations apply to governing bodies of maintained schools in England that are either federated governing bodies or are proposing to federate, subject to paragraph 2.

(2) Parts 3 and 4 of these Regulations apply to a governing body only if—

(a) the governing body are constituted under an instrument of government that takes effect on or after 1st September 2012; or

(b) where the governing body are constituted under an instrument of government that takes effect before 1st September 2012, the governing body or local authority—

(i) review the instrument of government on or after that date, and

(ii) decide under regulation 32(2) of the School Governance (Constitution) (England) Regulations 2007(1) that the instrument of government should be varied.

**Revocation, saving and transitional provisions**

3. The School Governance (Federations) (England) Regulations 2007(2) are revoked subject to regulation 4(1).

4.—(1) Regulations 1 to 3 and 13 to 30 of the School Governance (Federations) (England) Regulations 2007 continue to apply to a federated governing body constituted under an instrument of government that takes effect before 1st September 2012 unless and until Parts 3 and 4 of these Regulations apply to the governing body by virtue of regulation 2(2).

(2) A decision by a governing body under regulation 32(2) of the School Governance (Constitution) (England) Regulations 2007 is to be treated for the purposes of these regulations as a decision of the governing body under regulation 30(2) of the School Governance (Constitution) (England) Regulations 2012(3).

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(1) [S.I. 2007/957](#), as amended by [S.I. 2009/1924](#), [S.I. 2010/1172](#), [S.I. 2010/2582](#) and [S.I. 2012/YY](#).

(2) [S.I.2007/960](#) as amended by [S.I. 2007/3464](#), [S.I. 2009/1556](#), [S.I. 2010/1172](#) and [S.I. 2011/1725](#).

(3) [S.I. 2012/1034](#).

## Interpretation

### 5.—(1) In these Regulations—

“ERA 1988” means the Education Reform Act 1988**(4)**;

“SSFA 1998” means the School Standards and Framework Act 1998**(5)**;

“EA 2002” means the Education Act 2002;

“EIA 2006” means the Education and Inspections Act 2006**(6)**;

“AA 2010” means the Academies Act 2010**(7)**;

“appropriate diocesan authority” has the meaning given by section 142(1) and (4) of SSFA 1998;

“appropriate religious body”, in relation to a school designated under section 69(3) of SSFA 1998 as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body or person, if any, that represents the specified religion or religious denomination and that is prescribed under section 88F(3)(e) of SSFA 1998;

“the Constitution Regulations 2012” means the School Governance (Constitution) (England) Regulations 2012;

“day” means school day as defined by section 579 of the Education Act 1996;

“the federation date” means the date on which governing bodies federate;

“governing body” means a governing body incorporated under section 19(1) of EA 2002 or these Regulations as appropriate;

“the local authority” means the local authority by which a maintained school is, or a proposed school is to be, maintained;

“new school” has the same meaning as in the New Schools Regulations;

“the New Schools Regulations” means the School Governance (New Schools) (England) Regulations 2007**(8)**

“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 19;

“relevant local authority” means the local authority in which a federated school is situated and which is responsible for maintaining that school;

“the Procedures Regulations” means the School Governance (Procedures) (England) Regulations 2003**(9)**;

“qualifying foundation school” means a foundation or a foundation special school which has a foundation which meets any one or more of the conditions in section 23A(2),(3) and (4) of the SSFA 1998**(10)**; and

“the Staffing Regulations” means the School Staffing (England) Regulations 2009**(11)**.

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**(4)** 1988 c.40.

**(5)** 1998 c.31.

**(6)** 2006 c.40.

**(7)** 2010 c.32.

**(8)** S.I. 2007/958 as amended by S.I. 2007/3464, S.I. 2009/1924, S.I. 2010/1172 and S.I. 2010/2582.

**(9)** S.I. 2003/1377 as amended by S.I. 2003/1916, S.I. 2003/1963, S.I. 2004/450, and by S.I. 2007/959.

**(10)** Section 23A(1)(a) was inserted by section 33(1) of the Education and Inspections Act 2006 (c.40) and has been amended by S.I. 2010/1158 and S.I. 2011/1396.

**(11)** S.I. 2009/2680 as amended by S.I. 2010/1172.

## PART 2

### ESTABLISHING OR JOINING A FEDERATION

#### **Prescribed cases**

**6.—**(1) Regulations 7 to 10 apply where at least two governing bodies propose to federate in accordance with section 24 of EA 2002.

- (2) Regulations 11 and 12 apply where it is proposed to establish a new school and either—
- (a) the temporary governing body wish to federate with one or more governing bodies;
  - (b) the local authority propose that the school should be a federated school; or
  - (c) where the school is to be a foundation or voluntary school proposals for the establishment of which were published by proposers, the proposers propose that the school be a federated school.

#### **Procedure for schools proposing to federate**

**7.—**(1) Where a governing body are proposing to federate, they must first consider a report on the proposal.

(2) The consideration of the report must be specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 11(4) of the Procedures Regulations.

**8.—**(1) Where a governing body propose to federate with the governing body of a federation, they must give notice of the proposal to the governing body.

- (2) Upon receipt of the notice, the governing body of that federation must consider whether to—
- (a) give preliminary consent to the governing body joining the federation (“preliminary consent”); or
  - (b) reject the proposal for the governing body to join the federation.

**9.—**(1) Where a governing body propose to federate with one or more other governing bodies and, where necessary, preliminary consent has been given, they must jointly with the other governing body or bodies publish proposals for federation.

- (2) The proposals must contain the following—
- (a) the name or names of the governing body or bodies with which the governing body propose to federate and confirmation that that governing body, or those governing bodies, agree with the proposal to federate;
  - (b) the proposed size of the governing body of the federation;
  - (c) the proposed number of governors for each category of governor;
  - (d) the proposed arrangements for staffing the schools within the federation;
  - (e) the proposed federation date;
  - (f) the identity of the admission authority or authorities for the schools within the federation;
  - (g) the date, not less than six weeks after the publication of the proposals, by which written representations may be made to any governing body regarding the proposals and the address to which they should be sent; and
  - (h) such other matters as the governing bodies consider appropriate.
- (3) The governing bodies proposing to federate must publish the proposals by sending them to—
- (a) the Secretary of State;

- (b) the relevant local authorities;
  - (c) the head teacher of each school;
  - (d) in the case of any school with a foundation—
    - (i) the foundation governors; and
    - (ii) the trustees of any trust relating to the school;
  - (e) where any of the schools are designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate diocesan authority in the case of a Church of England or Roman Catholic Church school, or the appropriate religious body in the case of any other school;
  - (f) all staff paid to work at any of the schools;
  - (g) every person known to them to be a parent of a registered pupil at any of the schools; and
  - (h) such other persons as the governing bodies consider appropriate.
- (4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

**10.**—(1) The governing bodies proposing to federate must jointly consider any responses to the proposals and each governing body must determine whether—

- (a) to proceed with the proposals for federation as published;
- (b) to proceed with the proposals for federation with such modifications as the governing body consider appropriate; or
- (c) not to proceed with the proposals for federation.

(2) The modifications referred to in paragraph (1)(b) may not include a change in the identity of the governing bodies proposing to federate.

(3) All the governing bodies which determine to proceed must jointly give notice of that fact to the relevant local authority or authorities and the Secretary of State within one week of that determination.

(4) Any governing body which determines not to proceed must give notice of that fact to the Secretary of State within one week of that determination.

### **New schools proposing to federate**

**11.**—(1) Where it is proposed that a new school should federate with one or more schools or a federation, paragraph (2) or (3) applies as appropriate.

(2) Where a temporary governing body has been established, regulations 7 to 10 have effect as if references to a governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 7 to 10 have effect as if—

- (a) references to the governing body proposing to federate were references to the local authority or, where proposals are to establish a foundation or voluntary school proposals for the establishment of which were published by proposers, the proposers;
- (b) regulation 7(2) were omitted; and
- (c) in regulation 9(2)(a) for “the governing body propose to federate” there were substituted “the authority or the proposers propose that the temporary governing body of the new school should federate”.

**12.**—(1) Parts 1 to 3 and 5 to 7 of the New Schools Regulations apply to a temporary governing body constituted pursuant to this regulation.

(2) Where it is proposed that two or more new schools should federate together, with or without one or more other schools or other federations, the local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(3) Where the proposed federation includes schools which are maintained by two or more local authorities, those local authorities must agree who may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(4) Where one or more of the new schools referred to in paragraph (2) is to be a foundation or voluntary school proposals for the establishment of which were published by proposers, the local authority must consult the proposers—

- (a) as to whether the power given to the local authority in paragraph (2) should be exercised; and
- (b) if the local authority propose to exercise it, as to the date on which the arrangements should be made.

(5) Schedule 1 applies to a temporary governing body constituted pursuant to this regulation.

### **Incorporation of governing bodies of federations and dissolution of former governing bodies**

**13.**—(1) On the federation date—

- (a) the governing bodies of the federating schools or federations are dissolved;
- (b) the governing body of the federation is incorporated;
- (c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and
- (d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation are transferred to the governing body of the federation.

(2) Section 198 of and Schedule 10 to ERA 1988(**12**) (which make further provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **PART 3**

### **CATEGORIES OF GOVERNOR**

#### **Parent governor**

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

- (a) a person who—
  - (i) is elected as a governor in respect of a federated school in accordance with paragraphs 3 to 7 of Schedule 2 by—
    - (aa) parents of registered pupils(**13**) at that federated school, or

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**(12)** As amended by SSFA 1998 and the Further and Higher Education Act 1992 (c. 13).

**(13)** Within the meaning of section 434(5) of the Education Act 1996 (c.56).

- (bb) parents of children for whom educational or other provision is made on the premises of that federated school when it is a maintained nursery school (including any such provision made by the governing body under section 27(14) of EA 2002); and
- (ii) is such a parent at the time of the election; or
- (b) a person appointed as a parent governor in respect of a federated school in accordance with paragraphs 8 to 10 of Schedule 2.
- (2) Schedule 2 applies to the election and appointment of parent governors.
- (3) A person is disqualified from election or appointment as a parent governor of a federated school if the person is—
  - (a) an elected member of the local authority; or
  - (b) paid to work at the federation or a federated school for more than 500 hours in any consecutive twelve month period.
- (4) A person (“P”) is not disqualified from continuing to hold office as a parent governor because P ceases to be a parent of a registered pupil at a federated school or to fulfil any of the requirements set out in paragraphs 9 and 10 of Schedule 2 (as the case may be).

### **Staff governors**

- 15.—(1) In these Regulations “staff governor” means a person who—
- (a) is elected in accordance with Schedule 3 as a governor by persons who are employed by either the governing body of the federation, or the local authority under a contract of employment providing for those persons to work at the federation or federated school, and
  - (b) is so employed at the time of the election referred to in sub-paragraph (a).
- (2) Upon ceasing to work at the federation or at a school within the federation, a staff governor is disqualified from continuing to hold office as such a governor.

### **Local authority governors**

- 16.—(1) In these Regulations “local authority governor” means a person who—
- (a) is nominated by the local authority; and
  - (b) is appointed by the governing body having, in the opinion of the governing body, met any eligibility criteria that they have set.
- (2) Where the federation includes schools which are maintained by two or more local authorities, those local authorities must agree who may nominate the local authority governor.
- (3) A person is disqualified from appointment as a local authority governor if the person is eligible to be a staff governor.

### **Foundation governors**

- 17.—(1) In these Regulations,
- (a) “foundation governor” means a person who—
    - (i) is appointed to be a member of the governing body of the federation in respect of a particular federated school, by a person other than the local authority,

- (ii) is appointed for the purpose of securing that the character of the federated school including, where the federated school has a particular religious character, such religious character, is preserved and developed,
  - (iii) where the federated school has a foundation, is appointed for the purpose of securing that the federated school is conducted in accordance with the foundation's governing documents, including, where appropriate, any trust deed relating to the federated school, and
  - (iv) would, in the opinion of the person entitled to appoint the foundation governor, be capable of achieving the purposes for which they would be appointed as foundation governor;
- (b) "ex officio foundation governor" means a person who is a foundation governor by virtue of an office held by the person; and
  - (c) "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 21(1) of the Constitution Regulations 2012.
- (2) An ex officio foundation governor is, upon ceasing to hold the office from which the governorship derives, disqualified from continuing to hold office as such a governor.

### **Partnership governors**

**18.**—(1) In these Regulations "partnership governor" means a person who is appointed as such in accordance with Schedule 4.

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

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

(3) The disqualification criterion in paragraph (2)(d) does not apply in the case of a person who is employed by a local authority in England under a contract of employment providing for the person to work wholly at a school or schools maintained by the local authority.

### **Co-opted governors**

**19.** In these Regulations "co-opted governor" means a person who is appointed as a governor by the governing body of the federation and who, in the opinion of the governing body, has the skills required to contribute to the effective governance and success of the federation.

### **Associate members**

**20.**—(1) In these Regulations "associate member" means a person appointed by the governing body of a federation as a member of any committee established by them but who is not a governor.

(2) Nothing in this regulation prevents an associate member from being reappointed at the expiry of the associate member's term of office.

## PART 4

### COMPOSITION OF GOVERNING BODIES OF A FEDERATION

#### Requirements for all federations

**21.**—(1) The governing body of every federation must be constituted in accordance with this regulation.

(2) The total membership of the governing body of a federation must be no fewer than seven governors.

(3) The governing body of a federation must include the following—

- (a) one parent governor elected or appointed in accordance with regulation 14 in respect of each school in the federation;
- (b) the head teacher of each federated school unless any such head teacher resigns the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;
- (c) one staff governor; and
- (d) one local authority governor.

(4) The governing body may in addition appoint such number of co-opted governors as they consider necessary provided that the requirements in regulation 22 are met in respect of governing bodies of federations comprising foundation and voluntary schools.

(5) The total number of co-opted governors who are also eligible to be elected as staff governors under Schedule 3 must not exceed one third of the total membership of the governing body.

#### Additional requirements for federations comprising foundation and voluntary schools

**22.**—(1) The governing body of a federation comprising only foundation or foundation special schools which, in either case, do not have a foundation, must also include at least two (but no more than one quarter of the total) partnership governors.

(2) The governing body of a federation comprising only foundation or foundation special schools which have a foundation but which are not qualifying foundation schools must also include at least two (but no more than 45 per cent of the total) foundation governors.

(3) The governing body of a federation comprising only qualifying foundation schools must also include such number of foundation governors as to outnumber all the other governors by up to two.

(4) The governing body of a federation comprising only voluntary controlled schools must also include at least two (but no more than one quarter of the total) foundation governors.

(5) The governing body of a federation comprising only voluntary aided schools must also include such number of foundation governors as to outnumber all the other governors by two.

(6) The governing body of a federation comprising voluntary controlled schools and community, community special or maintained nursery schools must also include at least one foundation governor.

(7) The governing body of a federation comprising more than one category of school including at least one foundation, foundation special or voluntary aided school must also include at least two foundation governors (or partnership governors as appropriate in respect of any school without a foundation).

(8) In calculating the number of governors required in order to comply with this regulation, the number is to be rounded up or down to the nearest whole number.



## PART 5

### INSTRUMENTS OF GOVERNMENT, PROCEDURES, STAFFING, FINANCING AND CHARITABLE STATUS

#### **Qualifications, tenure of office and instruments of government**

23. Regulations 16 to 31 of, and Schedule 4 (Qualifications and disqualifications) to, the Constitution Regulations 2012 apply to the governing body of a federation and its members subject to the modifications in Schedule 5.

#### **Procedures of governing bodies of federations**

24. The Procedures Regulations apply to the procedure of governing bodies of federations subject to the modifications in Schedule 6.

#### **Staffing of federations**

25. The Staffing Regulations apply to the staffing of federations subject to the modifications in Schedule 7.

#### **Charitable status of federations**

26. The governing body of a federation which includes a foundation, voluntary or foundation special school is a charity but no governing body of a federation which includes only community, community special or maintained nursery schools is a charity.

#### **Information for the governing body of a federation**

27.—(1) Immediately before the federation date, the governing body of a school which is to become a federated school must prepare, for the purpose of assisting the governing body of the federation, a written report on the action which they have taken in the discharge of their functions relating to the school.

(2) All minutes and papers of a governing body of a school which is to become a federated school on the federation date, including the report prepared under paragraph (1), must be made available to the governing body of the federation.

#### **Financing of federations**

28. Except as provided by regulation 29, Chapter 4 of Part 2 of SSFA 1998 (Financing of maintained schools) applies to federated schools and their governing bodies as it applies to other maintained schools and their governing bodies.

29. In their application to a federated school in England, other than one for which a temporary governing body is established pursuant to regulations 31(3), 35 or 41(3), sections 49 to 51 of, and Schedule 15 to, SSFA 1998 have effect subject to the modifications in Schedule 8.

## PART 6

### FEDERATED SCHOOLS LEAVING FEDERATIONS

#### **Procedure for a school to leave a federation**

**30.**—(1) This regulation applies to a request made to the governing body of a federation for a federated school (“the relevant school”) to leave the federation.

(2) The request must be made in writing and signed by—

- (a) two or more governors;
- (b) the parents of at least one fifth of the registered pupils at the relevant school;
- (c) at least two fifths of staff who are paid to work at the relevant school;
- (d) the local authority;
- (e) the trustees of the relevant school; or
- (f) a body entitled to appoint foundation governors to the governing body of the federation.

(3) The governing body of the federation must give notice of the request to—

- (a) all relevant local authorities;
- (b) the head teacher of the federation and the head teacher of each federated school;
- (c) where the relevant school is a foundation or voluntary school with a religious foundation, the trustees of any trust relating to the relevant school and, in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (d) all staff paid to work at the relevant school;
- (e) every person known by the governing body of the federation to be a parent of a registered pupil at the relevant school; and
- (f) such other persons as the governing body of the federation consider appropriate.

(4) Notice under paragraph (3)(a) and (b) must be given within the period of one week beginning with the date on which the request was received.

(5) A request under paragraph (1) is to be taken to have been received by the governing body of a federation if given or sent to the chair or to the clerk of the governing body of the federation.

(6) Not less than 14 days after the governing body of the federation has given notice of the request in accordance with paragraph (3), the governing body must consider the request and all responses received from the persons to whom notice of the request was given and must decide whether—

- (a) the relevant school should leave the federation and, if so, on what date it should do so (“the de-federation date”);
- (b) the federation should be dissolved, and if so, on what date; or
- (c) the relevant school should not leave the federation.

(7) Such a decision does not have effect unless the matter is specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 11(4) of the Procedures Regulations.

(8) The governing body of the federation must give notice in writing of their decision under paragraph (6) within one week of the decision to those persons referred to in paragraph (3).

(9) Where the governing body of the federation decide under paragraph (6)(a) that the relevant school should leave the federation, the governing body must notify the Secretary of State in writing within one week of that decision.

### **Decision to permit federated school to leave a federation**

**31.**—(1) Where a governing body of a federation have resolved that a federated school should leave the federation paragraph (2) or (3) applies.

(2) Where one of only two federated schools is to leave a federation, regulations 35 and 36 apply to the governing body.

(3) Where a governing body have given notice to a local authority pursuant to regulation 30(8) that a decision has been made that a federated school should leave the federation,

(a) the local authority, on receipt of that notice, must—

(i) establish a temporary governing body in respect of the school leaving the federation in accordance with Parts 3 and 4 of the New Schools Regulations; and

(ii) make a new instrument of government for that school in accordance with Part 5 of the Constitution Regulations 2012; and

(b) the governing body of the federation must review the instrument of government of the federation in accordance with regulation 30 of the Constitution Regulations 2012.

(4) On the de-federation date the temporary governing body of the de-federated school are incorporated as the governing body of that school under the name given in the school's instrument of government.

(5) For the purpose of paragraph (3)(a)(ii)—

(a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and

(b) references in regulation 29 of the Constitution Regulations 2012 to—

(i) “governing body” are treated as references to “temporary governing body”, and

(ii) “foundation governors” are treated as references to “temporary foundation governors”.

### **Availability of amounts representing budget share**

**32.** Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a school leaving a federation may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of the school leaving the federation, as they think fit for any purposes of that school.

### **Transfer of property, rights and liabilities**

**33.**—(1) On the de-federation date—

(a) all land or property which, immediately before the de-federation date, was held by the governing body of the federation for the purposes of the de-federated school, transfers to, and by virtue of these Regulations vests in, the governing body incorporated under regulation 31(4); and

(b) all rights and liabilities subsisting immediately before the de-federation date which were acquired or incurred by the governing body of the federation, for the purposes of the de-federated school, transfer to the governing body incorporated under regulation 31(4).

(2) Section 198 of and Schedule 10 to ERA 1988 (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## PART 7

### DISSOLUTION OF FEDERATIONS

#### **Dissolution of federations following decision by the governing body of a federation**

**34.**—(1) Where—

- (a) the governing body of a federation decide that the federation should be dissolved; or
- (b) the governing body of a federation decides that one of only two federated schools should leave a federation,

the governing body of the federation must give notice of the decision and of the date of dissolution to the persons mentioned in paragraph (2) within one week of making the decision.

(2) The persons to be notified are—

- (a) the Secretary of State;
- (b) all relevant local authorities;
- (c) the head teacher of the federation and each head teacher of a federated school;
- (d) all staff paid to work at the federation or a federated school;
- (e) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (f) where a federated school is a foundation or voluntary school with a religious foundation, the foundation governors, the trustees of any trust relating to the federated school and, in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools; and
- (g) such other persons as the governing body of the federation consider appropriate.

**35.** Upon receipt of the notice given under regulation 34 the relevant local authority or authorities must—

- (a) establish a temporary governing body in respect of each school in accordance with Parts 3 and 4 of the New Schools Regulations; and
- (b) issue a new instrument of government for each school in accordance with Part 5 of the Constitution Regulations 2012.

**36.** For the purpose of regulation 35(b)—

- (a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 29 of the Constitution Regulations 2012 to—
  - (i) “governing body” are treated as references to “temporary governing body”, and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

#### **Expenditure of amounts representing budget share**

**37.** Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of each de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

### **Incorporation of governing body of a school leaving a federation**

**38.** On the date of dissolution the temporary governing body of each school are incorporated as the governing body of each de-federated school under the name given in the school's instrument of government.

### **Transfer of property, rights and liabilities**

**39.**—(1) On the date of dissolution—

- (a) all land or property which, immediately before the date of dissolution, was held by the governing body of the federation for the purposes of each de-federated school, transfers to, and by virtue of these Regulations vests in, the new governing body of each de-federated school incorporated under regulation 38; and
- (b) all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school transfer to the new governing body of each de-federated school incorporated under regulation 38.

(2) Section 198 of and Schedule 10 to ERA 1988 (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **PART 8**

### **DISCONTINUANCE OF FEDERATED SCHOOLS**

#### **Interpretation of “discontinuance”**

**40.**—(1) In this Part “discontinuance” includes—

- (a) implementation of proposals for discontinuing the federated school under Part 3 of Schedule 2 to EIA 2006;
- (b) discontinuance of the federated school under section 30 of SSFA 1998;
- (c) discontinuance of a federated school pursuant to a direction given under section 17(1) or 68(1) of EIA 2006; and
- (d) a requirement on the local authority to cease to maintain the federated school under section 6(2) of AA 2010.

(2) In this Part “discontinuance date” means the date on which the event described in regulation 40(1) takes effect.

#### **Dissolution of federations on discontinuance of federated schools**

**41.**—(1) This regulation applies where one or more federated schools are to be discontinued and only one federated school in the federation is not to be discontinued.

(2) The governing body of the federation must inform the Secretary of State of the discontinuance at least 2 months before the discontinuance takes place.

(3) The local authority must before the discontinuance date—

- (a) establish a temporary governing body in respect of the school that is not to be discontinued (“the de-federated school”) in accordance with Parts 3 and 4 of the New Schools Regulations; and

(b) issue a new instrument of government for the school in accordance with Part 5 of the Constitution Regulations 2012.

(4) On the dissolution date the temporary governing body of the de-federated school are incorporated as the governing body of that school under the name given in the school's instrument of government.

(5) Where any land held by the federated governing body for the purposes of the de-federated school is, by virtue of either paragraph 7 of Schedule 22 to the SSFA 1998 or paragraph 13 of Schedule 1 to AA 2010, transferred to and vested in the local authority on the dissolution of the federated governing body, the local authority must within 6 months of the dissolution, transfer the land to the temporary governing body referred to in paragraph 3(a).

**42.**—(1) For the purpose of regulation 41(3)(b)—

- (a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 29 of the Constitution Regulations 2012 to—
  - (i) “governing body” are treated as references to “temporary governing body”, and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

**43.** Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

#### **Discontinuance of federated schools where federation not dissolved**

**44.**—(1) This regulation applies where one or more federated schools are to be discontinued on the discontinuance date but more than one federated school will remain in the federation.

(2) Before the discontinuance date the governing body of the federation must review the instrument of government of the federation in accordance with regulation 30 of the Constitution Regulations 2012.

(3) In relation to any discontinuance other than a requirement on the local authority to cease to maintain the school under section 6(2) of AA 2010, on the discontinuance date—

- (a) all land or property, which, immediately before the discontinuance date was held by the governing body of the federation for the purposes of the discontinuing federated school(s) transfers to, and by virtue of these Regulations, vests in the local authority; and
- (b) all rights and liabilities subsisting immediately before the discontinuance date which were acquired or incurred by the governing body of the federation for the purposes of the discontinuing federated school or schools transfer to the local authority.

#### **Expenditure of amounts representing budget share**

**45.** Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

## PART 9

### APPLICATIONS FOR ACADEMY ORDERS

Members of the federated governing body applying for an Academy order

**46.**—(1) An application for an Academy order in respect of a federated school under section 3 of AA 2010 must be made by those governors, being no fewer than three in number, who—

- (a) together make up a proportion of the total number of governors determined in accordance with paragraph (2); and
- (b) include members of the federated governing body of each description prescribed in paragraph (3).

(2) The proportion is determined by dividing one by the total number of federated schools in the federation.

(3) The prescribed descriptions are—

- (a) the head teacher of the federated school, unless the head teacher has resigned the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;
- (b) any parent governor or parent governors elected by parents of registered pupils at the federated school or appointed to represent the federated school;
- (c) any staff governor employed by the federated governing body or local authority to work at the federated school; and
- (d) where the proposed application for an Academy order is in respect of a foundation or voluntary school, any foundation governors appointed in respect of the federated school.

(4) In any case where the application of the proportion determined in accordance with paragraph (2) leads to other than a whole number of governors, the number must be rounded up to the nearest whole number.

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